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SUPREME COURT OF THE
UNITED STATES.

FURNESS, WITHY & COMPANY, LTD., Petitioner, (Respondent below),	October Term 1916.	
AGAINST		
YANG-TSZE INSURANCE ASSOCIATION, LTD., *et. al.*, Respondents. (Libelants below.)	No. 106.	

NOTICE OF MOTION.

SIRS:

PLEASE TAKE NOTICE that the annexed motion to dismiss or affirm will be presented to the Supreme Court of the United States at ~~the opening of Court on Monday, December 11, 1916, or so soon thereafter as counsel may be heard, or if~~ the argument of the case ~~shall be heard before said date then this motion will be presented to the Court on the argument.~~

Dated, New York, December 9, 1916.

Yours, &c.,
J. PARKER KIRLIN,
LAWRENCE KNEELAND,
D. ROGER ENGLAR,
JOHN M. WOOLSEY,
Counsel for Respondents.

To:
CHARLES C. BURLINGHAM, ESQ..
NORMAN B. BEECHER, ESQ.,
Counsel for Petitioner.

SUPREME COURT OF THE
UNITED STATES.

FURNESS, WITHY & COMPANY, LTD., Petitioner, (Respondent below), AGAINST YANG-TSZE INSURANCE ASSOCIATION, LTD., *et. al.*, Respondents. (Libelants below.)	October Term 1916. No. 106.

MOTION TO DISMISS OR AFFIRM.

Now come the respondents by their counsel and move to dismiss the writ of *certiorari* heretofore granted herein by this Court on June 14, 1915, or to affirm the judgment herein.

(a) On the annexed affidavit and on the annexed certified copy of the record of the case in the United States District Court for the Southern District of New York entitled *In the Matter of the Petition of Furness, Withy & Company, Ltd., as Owner of the Steamship Pomaron for Limitation of its Liability,* (hereinafter referred to as the Limitation Proceedings), which involved the same subject-matter as the present case, and in which all the parties before this Court in the present case, together with others, entered into a compromise in which a decree was entered by consent in the United States District Court aforesaid, and

(b) On the Transcript of the Record of this case.

The reason for this motion is that this case which hereinafter will be referred to as the Collision Case, is now dead because the claims involved herein have been finally compromised and settled between the parties, and the respondents have been released and discharged of all liability therefor.

The Collision Case, here pending, was brought by fifteen parties, interested as owners or insurers of cargo on the steamship *Alleghany* of the Hamburg-American Line, to recover damages for the total loss of that cargo due to the sinking of the steamship *Alleghany* by the steamship *Pomaron* owned by Furness, Withy & Company, Ltd., the petitioner here and respondent below, in a collision off the Coast of Virginia on February 2, 1912.

The vessels were held both to blame in the District Court of the United States for the Southern District of New York. The Circuit Court of Appeals for the Second Circuit affirmed this decision.

The total recovery of the libelants in this Collision Case amounted to $171,930.81 with interest and costs of appeal.

Furness, Withy & Company, Ltd., claimed that the value of the steamship *Pomaron* and her pending freight at the time of the collision was $70,419.14, for which it had given bond in the Collision Case.

Other claimants came forward after the judgment and decree was entered on the decision of the Court of Appeals who were not entitled to participate in the bond given in the Collision Case, but who could prove claims for which, under the decision of that case, Furness, Withy & Company, Ltd., as owner of the steamship *Pomaron*, was liable.

Prior to any determination of the issues presented in the said Limitation Proceedings, and prior to the determination of the amount of the petitioner's interest in said steamship *Pomaron* and her pending freight, an agreement was reached among all the parties to the said Limitation Proceedings, among whom were a number of parties who are not before the Court in the Collision Case, whereby all the issues pending between the various parties in the Limitation Proceedings were settled and compromised, including the amounts at which the claims of the new parties should be fixed.

Thereupon, under circumstances more fully set forth in the annexed affidavit, and in the annexed Record of the Limitation Proceedings, by agreement of all the parties, a decree, embodying the terms of the said compromise and expressly reciting that it was entered as a result of the said settlement and compromise, was duly entered in the said United States District Court for the Southern District of New York on the consents of all the several parties, and on motion of Messrs. Burlingham, Montgomery & Beecher, proctors for Furness, Withy & Company, Ltd., the petitioner in the Limitation Proceedings, and respondent in the Collision Case.

By said decree Furness, Withy & Company, Ltd., was granted a limitation of its liability on payment of an agreed sum into Court, and pursuant to the said decree the amounts agreed to be paid to the various claimants in the Limitation Proceedings were fixed. Thereafter these amounts were duly paid and receipts and discharges in full were duly given by the various claimants, whereby all the damages suffered by

the claimants were finally settled and compromised with Furness, Withy & Company, Ltd., and among themselves, and the steamship *Pomaron* and Furness, Withy & Company, Ltd., were discharged from any other or further liability in the premises in any Court of any country or jurisdiction.

This case, therefore, does not present any actual controversy between the parties thereto and its prosecution by Furness, Withy & Company, Ltd., involves an endeavor on its part to have this Court decide what has become merely a moot or academic question.

Dated, New York, December 7, 1916.

J. Parker Kirlin,
Lawrence Kneeland,
D. Roger Englar,
John M. Woolsey,
Counsel for Respondents.

To:

Charles C. Burlingham, Esq.,
Norman B. Beecher, Esq.,
Counsel for Petitioner.

21 SUPREME COURT OF THE
UNITED STATES.

FURNESS, WITHY & COMPANY, LTD., Petitioner, AGAINST 22 YANG-TSZE INSURANCE ASSOCIATION, LTD., *et. al.*, Respondents.	October Term 1916. No. 106.

AFFIDAVIT.

STATE OF NEW YORK,
County of New York, } ss.:

JOHN M. WOOLSEY, being duly sworn, deposes
23 and says:

1. I am a member of the firm of Kirlin, Woolsey & Hickox, proctors for Yang-Tsze Insurance Association, Ltd., *et al.*, and I was a member of the firm of Converse & Kirlin to whose business my present firm is the successor. I have knowledge of the proceedings had herein and also in the limitation of liability proceeding brought by Furness, Withy & Co., Ltd., as hereinafter set forth.

24 2. On June 12, 1913, after full hearing and due consideration by the District Court, a final decree was entered entitled in *Yang-Tsze Insurance Association, Ltd., et al., against Furness, Withy & Company, Ltd., and fourteen other cases*, in all of which Furness, Withy & Company, Ltd., was the respondent, and various owners or insurers of cargo on the steamship *Alleghany* were libelants, in which recoveries of the damages suffered

by the libelants by reason of the sinking of the steamship *Alleghany* in the collision mentioned in the foregoing notice of motion, were severally awarded to the libelants against Furness, Withy & Company, Ltd., as owner of the steamship *Pomaron*. *Transcript of Record*, pp. 160-164.

3. An appeal was taken from this decree in behalf of Furness, Withy & Company, Ltd., on June 18, 1913. *Transcript of Record*, pp. 164-166.

4. The appeal duly came on to be argued in the Circuit Court of Appeals for the Second Circuit on March 20, 1914, and on June 10, 1914, the said Circuit Court of Appeals handed down an opinion affirming the decision below. Thereafter, on June 20, 1914, a decree affirming the decree of the District Court, with interest and costs, was entered in the said Circuit Court of Appeals.

5. Thereafter, in pursuance of the said decree of affirmance a mandate was issued by the Circuit Court of Appeals to the United States District Court for the Southern District of New York and duly filed therein and made the judgment of the said District Court, and on October 2, 1914, a decree and judgment on mandate was entered in the United States District Court for the Southern District of New York affirming the original decree of the District Court and providing for the recovery of the amounts awarded under the original decrees of the District Court, to wit: $171,930.81 with interest and the costs of the appeal.

6. The situation, therefore, was that there was

a judgment against Furness, Withy & Company, Ltd., in the sum of $171,930.81 with interest and costs entered on a mandate of the Circuit Court of Appeals in the Collision Case, when Furness, Withy & Company, Ltd., began the Limitation Proceeding, as hereinafter set forth, in an effort to cut down its liability to the value of the steamship *Pomaron* and her pending freight after the collision, which is claimed amounted to a total of only $70,419.14.

7. Three days after the entry of the decree on mandate aforesaid in the United States District Court for the Southern District of New York, namely, on October 5, 1914, a petition was filed in said District Court by Furness, Withy & Company, Ltd., as owner of the steamship *Pomaron*, for a limitation of its liability, wherein it was prayed that the Court should appraise the value of the petitioner's interest in the steamship *Pomaron* and her pending freight for the voyage on which the collision happened; that the Court should make an order directing the petitioner to file a stipulation with approved surety for the payment into Court of the petitioner's interest as found; that the Court should make the usual orders for monition and injunction according to the practice in limitation proceedings, and that the Court should adjudge that the petitioner was not liable to any extent for any damage or injury arising out of the collision, or if the petitioner should be adjudged liable, then that its liability should be limited to the amount of the value of the petitioner's interest in the steamship *Pomaron* and her freight at the end of the voyage on which she was engaged at the time of the collis-

ion, and that the fund representing that value should be divided *pro rata* among such claimants as might duly prove their claims in the Limitation Proceeding. *Record in Limitation Proceeding,* pp. 1-7. A certified copy of the Record of the United States District Court for the Southern District of New York in the Limitation Proceeding is hereto annexed and hereby made part of this affidavit.

8. Immediately thereafter, the petitioner, Furness, Withy & Company, Ltd., took the steps necessary to comply with the practice in limitation proceedings obtaining in the United States District Court for the Southern District of New York and, by filing a temporary or *ad interim* bond, secured an injunction whereby all actions against the petitioner for claims arising out of or connected with the collision between the steamship *Pomaron* and the steamship *Alleghany* and the subsequent sinking of the steamship *Alleghany* were stayed and restrained, except in the Limitation Proceeding, until the hearing and determination thereof. *Limitation Record,* pp. 16-19.

9. The said injunction order was duly served on the proctors for the various libelants in the collision case. Therefore, further proceedings looking towards execution on the decree on mandate entered in the District Court as aforesaid were, and since have been, stayed and prevented.

10. Thereafter, the petitioner gave public notice by advertisement, as required by the prac-

37 tice in limitation proceedings, and as provided in the injunction order aforesaid, and all persons in interest were commanded to make proof of their respective claims before Alexander Gilchrist, Jr., Esq., a Commissioner, at his office in the Post Office Building, New York City, on or before January 18, 1915, at 10.30 o'clock in the forenoon.

38 11. In pursuance of this public notice claims were filed by the several libelants in the collision case, and also by a number of other claimants who had not previously taken any proceedings against the petitioner. *Cf.* List of Libellants on page 160 in the *Transcript of Record* in this case and Commissioner's Report giving List of Claimants, pp. 57-59 of the annexed *Record of the* 39 *Litigation Proceedings.*

12. On the 18th day of January, 1915, an order of default against all persons who had not filed claims in the Limitation Proceedings was entered in the United States District Court for the Southern District of New York. By this order the parties to the Limitation Proceedings entitled to participation in the fund representing the steamship *Pomaron* and her freight became 40 fixed. *Record of Limitation Proceedings,* pp. 55-56.

13. On April 12, 1915, the petitioner, Furness, Withy & Company, Ltd., applied to this Court for a writ of *certiorari* to the Circuit Court of Appeals for the Second Circuit. This application was Docket Number 921 of the October Term, 1914, of this Court. This petition was de-

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nied by this Court on April 19, 1915. 238 U. S., p. 625.

14. Thereafter, pursuant to negotiations which had been pending between the proctors for the various parties to the Limitation Proceedings, an agreement of settlement and compromise was reached whereby it was agreed that the petitioner should surrender the amount stated by its 42
own surveyors and employes to be the value of the steamship *Pomaron* after collision with the steamship *Alleghany* and her pending freight, with interest added and also the sum of $9,496.19, being the amount recovered by Furness, Withy & Co., Ltd., from the owners of the steamship *Alleghany* with interest, to wit, the total sum of $93,514.90; that the petitioner should thereupon be granted a limitation of its litbility to the said 43
amount without any opposition by any of the claimants; that all bonds and stipulations for value and costs given by the petitioner for the payment of money into Court should be deemed fulfilled, satisfied and canceled forthwith; and that the money surrendered and deposited by the petitioner should be divided into certain proportions among the various claimants, which proportion had been the subject of negotiation and agreement between the various claimants them- 44
selves. The agreement so arrived at among the various counsel interested was embodied in the form of a final decree in the Limitation Proceedings entered April 22, 1915, which recited on its face that it was entered pursuant to a compromise and settlement of the issues between the petitioner and all the claimants, and this decree was thereupon entered by consent of all the parties. *Limitation Record*, p. 186.

15. There was not any appraisal of the petitioner's interest in hull and freight had in the Limitation Proceedings. It was part of the compromise among the parties to those proceedings that the values placed upon the vessel and freight by the petitioner's employes should be accepted as the value of the petitioner's interest in the vessel and freight at the time of the collision.

16. Pursuant to this decree of compromise and settlement consented to in the Limitation Proceeding, the petitioner, Furness, Withy & Company, Ltd., paid in the amount agreed on to the Clerk of the Court, and the Clerk of the Court, in pursuance of the provision of the decree, paid out to the several participating claimants their ratable share of the sum so paid in by the petitioner, and each claimant, as required by the decree, executed a receipt for the sum so received discharging the steamship *Pomaron*, her owners and charterers from liability in respect of the collision with the steamship *Alleghany* and renouncing any and every right of action or suit other than the right in the Limitation Proceeding against the steamship *Pomaron*, her owners and charterers, in law or in admiralty in any Court of any country or jurisdiction. *Limitation Proceeding*, hereto annexed, pp. 183-184.

17. Thereafter, on or about May 17, 1915, Messrs. Burlingham, Montgomery & Beecher, who had acted as proctors for Furness, Withy & Company, Ltd., in both the proceedings hereinbefore mentioned, served a notice on the proctors for the several libelants in the original

suits in which the liability of the steamship *Pomaron* had been adjudged, that they would present a second petition for a writ of *certiorari* to this Court on June 1, 1915. This petition was duly presented and the order of April 19, 1915, denying the first petition for a writ of *certiorari* was vacated and set aside by this Court, and a writ of *certiorari* to the Circuit Court of Appeals for the Second Circuit was granted on June 14, 1915. 238 *U. S.*, pp. 625, 634.

18. Prior to the granting of the said writ, all the money deposited with the Clerk of the Court by the petitioner had been paid out to the respective claimants and their proctors and the receipts and discharges required under the decree had been given to the Clerk by the several claimants or their proctors. *Limitation Record,* pp. 194-201.

19. Deponent is informed and believes that a large part of the money so paid over has been transmitted by the proctors who received the same to clients in foreign countries, among which are Switzerland and Germany. Jurisdiction over many of these parties could not now be obtained in the United States.

20. There was not any money paid by Furness, Withy & Company, Ltd., under the original decree of the District Court in these proceedings, or under the decree entered on the mandate of the Circuit Court of Appeals, when the decree of the District Court was affirmed. All the money paid to the respondents in the present

53 *Affidavit.*

case was paid to them after the aforesaid compromise which was embodied as aforesaid in the final decree in the Limitation Proceedings, and in pursuance of the final decree and the agreements recited therein.

21. On July 1, 1915, after this Court had granted a *certiorari* in the Collision Case, a
54 motion was made on an order to show cause by Furness, Withy & Company, Ltd., in the Limitation Proceeding that the decree entered therein by unanimous consent on April 22, 1915, should be opened and vacated, amended and corrected and the Limitation Proceeding continued until this Court had rendered its decision on the writ of *certiorari* which is now pending in this Court, and which had been granted on June
55 14, 1915, and that, in the event of a reversal or modification of the decision of the Circuit Court of Appeals, restitution should be decreed to the petitioner, Furness, Withy & Company, Ltd., of the moneys paid by it in compromise under the final decree of April 22, 1915, in the Limitation Proceeding.

22. This motion was opposed by counsel for the claimants who filed affidavits setting forth
56 that the amounts severally due the claimants had been paid out by the Clerk of the Court to them in pursuance of the decree of April 22, 1915, and that they, in turn, had remitted the amounts to their several clients less their disbursements and appropriate charges for fees, and that the case was entirely at an end, both so far as concerned the Limitation Proceeding and the accounting between the claimants and their

respective attorneys for the amounts received in settlement thereof.

23. An order was entered by one of the District Judges on this motion, providing

"That no decision be made on the question of the sufficiency of the service herein or the merits of this motion at the present time, nor until the United States Supreme Court shall have rendered its decision on the aforesaid writ of *certiorari* to the Circuit Court of Appeals for the Second Circuit, granted June 16, 1915, and that the term of this Court for all purposes of the relief sought by the petitioner herein be, and it hereby is extended until the aforesaid decision of the United States Supreme Court and until appropriate action thereunder by the Circuit Court of Appeals and by this Court."

It was further ordered that the motion made should be continued until the further order of the District Court.

24. The contention of the claimants at the time of the motion for a continuance of the Limitation Proceeding, and ever since, has been that under the circumstances the District Judge was without jurisdiction to disturb, modify or vacate a decree embodying a compromise agreement which had been entered on the consent of all the parties to a proceeding, and further that as the writ of *certiorari* was granted in the Collision Case, which was an entirely independent and separate case from the Limitation Proceeding in which there were other parties involved, that the compromise and settlement of the Limitation Proceeding could never, in any way, be

61 *Affidavit.*

affected by a decision in the Collision Case by this Court.

25. Your deponent submits, therefore, that as a result of the decree of compromise and settlement entered by consent as aforesaid in the Limitation Proceedings, a certified copy of which
62 in hereto annexed, and the actual payment of the amounts agreed upon and set forth in the said decree, there is no controversy between the parties to the original suits which are before this Court under the writ of *certiorari* granted as aforesaid on June 14, 1915, and further submits that this Court should dismiss the writ of *certiorari* or affirm the judgment of the District Court of the United States entered herein on June 12, 1913, as aforesaid, or grant to the re-
63 spondents, Yang-Tsze Insurance Association, Ltd., *et al.*, such other or further relief as may be just in the premises.

JOHN M. WOOLSEY,

Sworn to before me this 9th day of December, 1916.

(Seal.)

CLETUS KEATING,
Notary Public, No. 33,
New York County.

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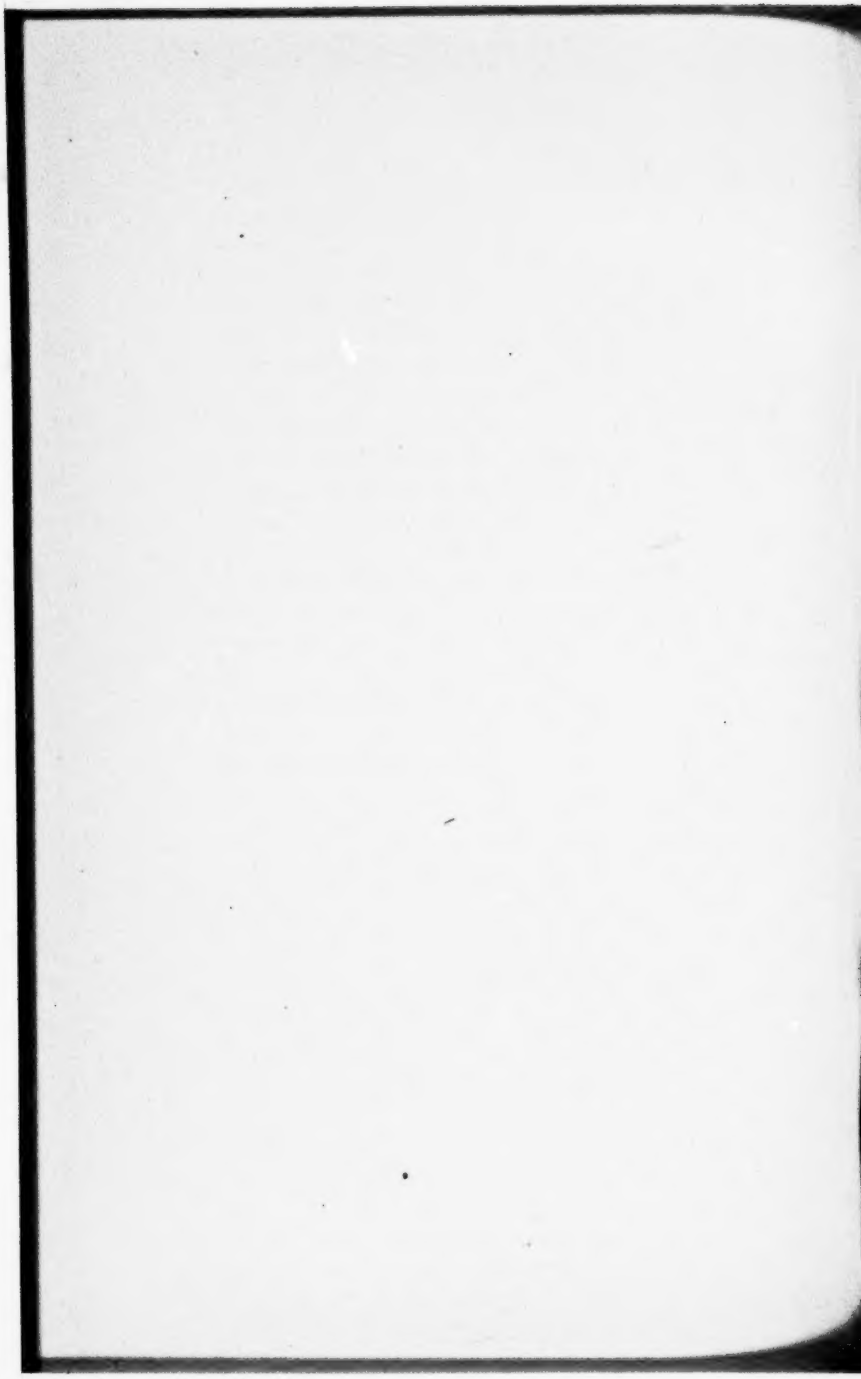

Petition.

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

The petition of Furness, Withy & Company, Limited, owner of the steamship *Pomaron*, in a cause of limitation of liability, civil and maritime, alleges as follows:

FIRST: The petitioner is a British corporation and operates a line of cargo steamships between European and American ports and has an office for the transaction of business within this District. At the times hereinafter mentioned the petitioner was the sole owner of the steamship *Pomaron*, which is a steel screw vessel of 1809 tons gross, 1127 tons net, 278 feet long, 40.5 feet beam, and 20.5 feet depth of hold.

The petitioner had used due diligence to make said vessel seaworthy, and until the accident hereinafter mentioned said steamship was in fact tight, staunch, strong and in all respects seaworthy.

SECOND: On February 1, 1912, the *Pomaron* left Baltimore, bound for Leith, laden with grain and general cargo. She was under the command of an experienced master, and was fully and efficiently manned, equipped and supplied in conformity with the laws of the United States.

All went well until about 11:15 A. M. of February 2, 1912, when in about 37°32′ N. latitude and 74° W. longitude, she collided with and sank the steamship *Alleghany*. The *Alleghany*, her cargo, the personal effects of the crew, and everything connected with the vessel became a total loss with the exception of two of the *Alle-*

5 *ghany's* lifeboats, which were transported by the *Pomaron* into the port of Norfolk. No lives were lost.

THIRD: The facts and circumstances of said collision and the resulting loss and damage are as follows: On February 1, 1912, the *Pomaron* left Baltimore, bound for Leith. She passed
6 Cape Henry between midnight and 1 A. M. of February 2, 1912, and set a course E. by N. ¼ N. magnetic, her compass course being E. by N., which course she maintained until just before the collision. The weather was fine and clear, and the wind a moderate breeze from the west. The *Pomaron* was making about 9 knots an hour.

About 10:35 A. M. the first officer of the *Pomaron,* who was on the bridge in charge of
7 her navigation, sighted on the port bow a steamship distant about 10 miles, which was apparently steering a course about south. The bearing of this vessel, which proved to be the *Alleghany,* did not change as she approached but the *Pomaron* kept her course and speed until she saw that the *Alleghany* was doing nothing whatever to keep out of the way of the *Pomaron.* The first officer of the *Poramon,* therefore, blew one blast of his whistle and at the same time ordered
8 the helm a little to port. Shortly afterwards the *Alleghany* suddenly blew a signal of two blasts indicating that she was directing her course to port with the intention of crossing the *Pomaron's* bows. Seeing that a collision was inevitable, the first officer of the *Pomaron* ordered the engines full speed astern and the helm put hard aport in an effort to ease the blow. The *Alleghany* kept on at full speed across the *Pom-*

aron's bows, at the last moment swinging apparently under a starboard helm, and the vessels came together, the *Pomaron's* stem striking the *Alleghany* a glancing blow on her starboard side abaft the engine room. The way of the *Pomaron* was almost checked at the time of the collision, but the *Alleghany* was swinging rapidly to port and went on at full speed for some distance. The *Pomaron* stood by to render assistance and took all the crew and passengers on board when it was found that the *Alleghany* was sinking. 10

FOURTH: The collision aforesaid and the loss, damage, injury and destruction resulting therefrom were occasioned and incurred without the privity or knowledge of the petitioner, and were not caused or contributed to by any negligence on its part or on the part of those in charge of the steamship *Pomaron,* but were due solely to the negligence of the steamship *Alleghany* and those in charge of her in the following respects, among others: 11

1. In that a good lookout was not maintained.

2. In that there was no officer or any competent person in charge of her navigation for some time prior to the collision. 12

3. In that although she had the *Pomaron* on her starboard hand she did not keep out of the way of the *Pomaron.*

4. In that she made no change of course until too late to avoid a collision.

5. In that she starboarded her helm, and attempted to cross the *Pomaron's* bows.

13 *Petition.*

6. In that she did not port her helm or stop and reverse in time to avoid a collision.

7. In that she did nothing to avoid a collision.

FIFTH: Proceedings have already been brought against the petitioner for damages alleged to have been sustained by reason of the loss of the
14 steamship *Alleghany*, her cargo, personal effects and equipment, as follows:

In the United States District Court for the Southern District of New York, by

Eugene J. F. Coleman for loss of cargo;
Marshall K. Weidensaul for loss of cargo;
Francis W. Van Praag for loss of cargo;
Orton G. Orr for loss of cargo;
Laura Moore for loss of cargo;
Louis Bertschmann for loss of cargo;
15 M. H. Silvera for loss of cargo;
Federal Insurance Company for loss of cargo;
Nord Deutsche Insurance Company for loss of cargo;
Yang-Tse Insurance Company, Ltd., *et al.*, for loss of cargo;
Boston Insurance Company for loss of cargo;
16 Hamburg-Amerikanische Packet-Fahrt-Actien-Gesellschaft (Hamburg American Line) for loss of the steamship *Alleghany* and equipment;
United States of America for loss of mail;
Gerhard Arlt for loss of personal effects of the officers and crew of the Alleghany.

The petitioner expects that other claims will be presented against it and that other suits will be begun by persons who sustained loss by reason

of said collision. The demands already made against the petitioner in behalf of the various claimants amount to more than $200,000. 17

SIXTH: The steamship *Pomaron* was damaged to the extent of $15,610. The value of the steamship *Pomaron* at the termination of said voyage after the collision with the *Alleghany* amounted to the sum of $64,389.77. The freight earned by the *Pomaron* on said voyage amounted to the sum of $6,029.37, making the value of petitioner's interest in the *Pomaron* and her pending freight $70,419.14. 18

SEVENTH: On or about February 29, 1912, the petitioner duly executed a stipulation for value in the sum of $70,500 with good and sufficient surety, as security for the claims of the libellants Hamburg American Line and Yang-Tse Insurance Company, Ltd., and claims which any other persons might have against the steamship *Pomaron* and her owners, which stipulation for value was approved by Messrs. Haight, Sandford & Smith, proctors for the Hamburg American Line; Messrs. Convers & Kirlin, proctors for certain cargo interests; Messrs. Harrington, Bigham & Englar, proctors for certain cargo interests; and Messrs. Kneeland, Harison & Hewitt, proctors for certain cargo interests. 19 20

EIGHTH: The petitioner desires to contest its liability as owner of the steamship *Pomaron* for the loss, destruction, damage and injury occasioned or incurred by the collision with the said steamship *Alleghany* (independently of the limitation of liability hereinafter claimed) and also to claim the benefit of the limitations of liability provided for in Sections 4283, 4284 and 4285 of

the Revised Statutes of the United States, and the various statutes supplementary thereto and amendatory thereof, and to that end the petitioner is ready and willing to give a stipulation with sufficient surety for the payment into Court of the amount or value of the petitioner's interest in the steamship *Pomaron* and her pending freight, whenever the same shall be ordered by this Court, as provided by the aforesaid statutes, by Rule 54 in Admiralty, and by the rules and practice of this Court.

NINTH: All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, the petitioner prays:

1. That the Court cause due appraisement to be made of the amount or value of its interest in the steamship *Pomaron* and of her pending freight for the aforesaid voyage.

2. That the Court make an order directing the petitioner to file a stipulation, with surety to be approved by the Court, for the payment into Court of the amount of the petitioner's said interest, whenever the Court shall so order.

3. That the Court make an order directing the issuance of a monition to all persons claiming damages for any loss, damage or injury caused or resulting from the collision aforesaid, citing them to appear before a Commissioner to be named by the Court in said order, and make due proof of their respective claims, and also to appear and answer the allegations of this petition at or before a certain time to be fixed by the monition.

4. That the Court make an order directing that, on the giving of such stipulation as may be determined to be proper, an injunction issue restraining the commencement, continuation or prosecution of any suit, action or legal proceeding of any nature whatever, except in the present proceeding, against the petitioner in respect of any claim or claims arising out of the aforesaid accident.

5. That the Court in this proceeding adjudge that the petitioner is not liable to any extent for any loss, damage or injury, nor for any claim whatsoever in any way arising out of, or in consequence of the collision aforesaid; or, if the petitioner shall be adjudged liable, then that its liability be limited to the amount or value of the petitioner's interest in the steamship *Pomaron* at the end of the voyage on which she was engaged at the time of said accident, and her pending freight, and that the moneys paid or secured to be paid as aforesaid be divided *pro rata* among such claimants as may duly prove their claims before the Commissioner hereinbefore referred to, saving to all parties any priorities to which they may be legally entitled and that a decree may be entered discharging the petitioner from all further liability.

6. That the petitioner have such other or further relief as the justice of the cause may require.

FURNESS, WITHY & COMPANY, LIMITED,
By H. C. Blackiston, U.S. Manager

BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Petitioner.

Petition.

SOUTHERN DISTRICT OF NEW YORK,
County of New York, } ss.:

H. C. BLACKISTON, being duly sworn, says: I am the U. S. Manager of Furness, Withy & Company, Limited, the petitioner herein. The foregoing petition is true to the best of my knowledge, information and belief. The sources of my knowledge and information are statements made by the officers and crew of the steamship *Pomaron*, investigations which I have caused to be made concerning the subject matter of this petition, and information which I have acquired in the course of my duties as U. S. Manager of the petitioner. The reason this verification is not made by petitioner is that it is a foreign corporation.

H. C. BLACKISTON.

Sworn to before me, this
3rd day of October, 1914.

ADELINE K. SCHNEIDER,
[SEAL] Notary Public No. 3436,
New York County.

Register No. 6209.
Commission expires March 30, 1916.

[Endorsed:] — District Court of the United States, Southern District of New York—In the Matter of the Petition of Furness, Withy & Co., Ltd., for Limitation of its Liability as owner of the steamship *Pomaron*—Petition—Burlingham, Montgomery & Beecher, Proctors for Petitioner, 27 William Street, Borough of Manhattan, New York City—Filed October 5, 1914.

Affidavit of Value. 33

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter of The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of its Liability as owner of the steamship "POMARON."	Affidavit of Value. 34

SOUTHERN DISTRICT OF NEW YORK, County of New York, } ss.:

CHARLES E. ROSS, being duly sworn, says: 35

1. I am a marine surveyor of 25 years' experience, and know the value of steamships of the class of the steamship *Pomaron* and equipment, owned by Furness, Withy & Company, Limited. I surveyed the steamship *Pomaron*, and examined her equipment at the request of Furness, Withy & Company, Limited, on the 20th day of February, 1912, after repairs had been made as a result of a collision with the 36 steamship *Alleghany*.

2. The actual value of said steamship *Pomaron* in the condition in which said steamship was at the time I made said survey on February 20th, 1912, was, in my opinion, $80,000.

3. In my opinion, the value of the steamship *Pomaron* and her equipment as of February 2,

37 *Affidavit of Value.*

1912, was $80,000., less the cost of repairs necessitated by the collision with the *Alleghany*.

CHAS. E. ROSS.

Sworn to before me, this 14th day of September, 1914.

CHAUNCEY I. CLARK,
[SEAL] Notary Public,
38 Kings County.

Certificate filed in New York County.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

39

In the Matter of The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of its Liability as owner of the steamship "POMARON."	Affidavit of Value.

40

SOUTHERN DISTRICT OF NEW YORK, County of New York, } ss.:

HERBERT C. MILLICAN being duly sworn, says: I am agent at New York, of Furness, Withy & Company, Limited, the petitioner herein. The petition herein is filed to limit the liability of Furness, Withy & Company, Limited, as owner of the steamship *Pomaron* in respect of any

claims or suits against it or the steamship *Pomaron* arising out of or in any way connected with the collision between said steamship *Pomaron* and the steamship *Alleghany* on February 2, 1912, in consequence of which the *Pomaron* was seriously damaged and the *Alleghany* sank on the same day and became a total loss, nothing being saved from the wreck except two lifeboats and their equipment.

The *Pomaron,* since the above collision, has been within the jurisdiction of this Court, and a stipulation for value in the sum of $70,500., approved by the proctors for the various claimants, has been filed in this Court to respond for petitioner's liability in the various suits instituted by the owners of the *Alleghany* and her cargo.

An appraisal of the steamship *Pomaron* and her equipment has been made by John H. Marsden, surveyor to Lloyds Register of Shipping, and Charles E. Ross, consulting surveyor, who have reported the value thereof as of February 2, 1912, to be $80,000., less the cost of necessary repairs, which I verily believe to be the true value.

After the collision between the *Pomaron* and the *Alleghany* a survey was held of the damages sustained by the *Pomaron,* and repairs were made at Newport News, Virginia, which cost the sum of $15,610.23.

The freight moneys earned by the *Pomaron* on said voyage from Baltimore to Leith, Scotland, when the collision occurred amounted to $6,029.37. There were no passage moneys. The entire aggregate value of the interest of the petitioner in said steamship *Pomaron* and her

45 *Affidavit of Value.*

pending freight does not exceed the sum of $70,419.14.

HERBERT C. MILLICAN.

Sworn to before me, this 15th day of September, 1914.

CHAUNCEY I. CLARK,
Notary Public,
46 Kings County.

Certificate filed in New York County.

LLOYD'S REGISTER OF SHIPPING,

Head Office: 71, Fenchurch Street, London, E. C.

(Seal.) Port Newport News, Virginia,

February 20th, 1912.

47 THIS IS TO CERTIFY that JOHN H. MARSDEN the undersigned Surveyor to this Society did at the request of the Owners, and Chas. E. Ross, Consulting Surveyor, did also at the request of the Owners, make examination of the steel S. S. *Pomaron* after repairs had been carried out at Newport News, and with the vessel in loaded condition, and we estimate the value of the vessel at the sum of eighty thousand dollars
48 ($80,000.).

(Sgd.) JOHN H. MARSDEN,
Surveyor to Lloyd's,
Register of Shipping.

(Sgd.) CHAS. E. ROSS,
Consulting Surveyor.

This Certificate is issued upon the terms of the Rules and Regulations of the Society, which provide that:

"While the Committee use their best endeavors to ensure that the functions of the Society are properly executed, it is to be understood that neither the Committee nor the Society are under any circumstances whatever to be held responsible for any inaccuracy in any report or certificate issued by the Society or its Surveyors, or in any entry in the Register Book or other publication of the Society, or for any error of judgment, default or negligence of the Surveyors, or other Officers or Agents of the Society."

[Endorsed:]—District Court of the United States, Southern District of New York—In the Matter of the Petition of Furness, Withy & Company, Ltd., for Limitation of its liability as owner of the steamship *Pomaron*—Copy, Certificate and Affidavits of Value—Burlingham, Montgomery & Beecher, Proctors for Petitioner, 27 William Street, Borough of Manhattan, New York City—Filed, Oct. 8th, 1914.

53 *Notice.*

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

54 of

The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of its Liability as owner of the steamship "POMARON."

SIRS:

PLEASE TAKE NOTICE that the within are copies
55 of an order for appraisal and for proof of claims, issuance of monition and injunction, made and entered herein October 8, 1914, and a monition issued herein October 9, 1914, and that the same are served upon you pursuant to the aforesaid order of October 8, 1914.

Dated, New York, October 10, 1914.

Yours, etc.,

56 BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Furness, Withy & Co., Ltd.,
Petitioner.

Notice. 57

To:

Messrs. Convers & Kirlin,
Proctors for Yang-tsze Insurance Association, Limited, *et al.* and Nord-Deutsche Insurance Co., *et al.*

Messrs. Kneeland, Harison & Hewitt,
Proctors for Federal Insurance Co., *et al.*

Messrs. Barry, Wainwright, Thatcher & Symmers, 58
Proctors for Walter Oloffson, *et al,* M. H. Silvera and Hazan & Co.

Messrs. Williams & Stevenson,
Proctors for Boston Insurance Co.

Messrs. Harrington, Bigham & Englar,
Proctors for Walter D. Despard, Eugene J. F. Coleman, Marshall K. Weidensaul, Frances W. Von Praag, Orton C. Orr, Laura Moore and Louis Bertschman. 59

H. Snowden Marshall, Esq.,
Proctor for United States of America.

60

61 *Order for Appraisal, etc.*

At a Stated Term of the District Court of the United States for the Southern District of New York, held at the Court Rooms, Borough of Manhattan, City of New York, on the 8th day of October, 1914.

62 Present—Hon. Charles M. Hough,
District Judge.

In the Matter of The Petition of Furness, Withy & Company, Limited, for Limitation of its Liability as owner of the steamship "Pomaron."	Order for Appraisal and for Proof of Claims, Issuance of Monition and Injunction.

63

A petition having been filed herein October 5, 1914, by Furness, Withy & Company, Limited, as owner of the steamship *Pomaron*, her engines, etc., claiming the benefit of the limitation of liability provided for in the third and fourth sections of the Act of Congress entitled, "An Act to
64 Limit the Liability of Shipowners and for other purposes," passed March 3, 1851, now embodied in Sections 4283, 4284 and 4285 of the Revised Statutes and the statutes supplemental thereto and amendatory thereof, and also contesting its liability independently of the limitation of liability claimed under said acts for any loss, damage, injury or destruction resulting from said steamship colliding with the steamship *Alleghany*,

and said petition also stating the facts and circumstances on which such exemption from and limitation of liability are claimed, and on reading and filing the certificate of John H. Marsden and Charles E. Ross, dated February 20, 1912, and the affidavits of Charles E. Ross and Herbert C. Millican, verified respectively September 14th and September 15th, 1914, as to the value of said steamship *Pomaron,* the cost of repairs made 66 necessary by the collision, and the amount of freight pending on the voyage in which she was engaged at the time of said collision, from which it appears that the amount or value of the interest of the petitioner in said steamship *Pomaron* and her freight pending at the termination of the voyage on which she was engaged at the time of said collision was $70,419.14;

Now, on motion of Burlingham, Montgomery & 67 Beecher, proctors for the petitioner, it is

ORDERED that the petitioner file with the Clerk of this Court a stipulation for value in the sum of $70,500 with good and sufficient surety for the payment of said sum of $70,500 into Court, with interest thereon from February 4, 1912, being the date of the termination of the voyage of the steamship *Pomaron* aforesaid; and it is

FURTHER ORDERED that unless exceptions be filed to the aforesaid provisional valuation of the *Pom-* 68 *aron* and her pending freight on or before Jan. 23, 1915, such provisional valuation shall stand as the appraisal by this Court of the amount or value of the interest of the petitioner in said steamship *Pomaron* and her pending freight; and it is

FURTHER ORDERED that on the filing of such stipulation a monition issue out of and under the seal of this Court against all persons claiming dam-

69 *Order for Appraisal, etc.*

ages for any and all losses, damages or injuries occasioned by or resulting from the collision between the steamship *Pomaron* and the steamship *Alleghany* on February 2, 1912, and the subsequent sinking of the steamship *Alleghany*, citing them to appear before this Court and make due proof of their respective claims on or before the 18th day of January, 1915, at 10:30 o'clock in
70 the forenoon, and Alex Gilchrist, Jr., Esq., is hereby appointed Commissioner, before whom proof of claims which shall be presented in pursuance of said monition shall be made, subject to the right of any person to controvert or question the same, with liberty also to any person or persons claiming damages as aforesaid, who shall have presented his or their claims to said Commissioner undr oath, to answer said petition; and
71 it is

FURTHER ORDERED that public notice of such monition be given by publication thereof in the Evening Mail, a newspaper published in the City of New York, once a day for fourteen days, the first publication to be at least three months before said return day, and that a copy of said monition be served on the respective attorneys or proctors of all persons who at the time of making this order shall have filed libels or begun suits for
72 damage or loss or injury occasioned by or arising out of the collision aforesaid, together with a copy of this order, such last mentioned service to be made at least thirty days before the return day; and it is

FURTHER ORDERED that the beginning or prosecution of any and all suits, actions or legal proceedings of any nature or description whatsoever in respect of any claim arising out of or connected

with the collision between the steamship *Pomaron* and the steamship *Alleghany* on February 2, 1912, and the subsequent sinking of said steamship *Alleghany* on the same day, be and hereby are stayed and restrained until the hearing and determination of this proceeding; and it is

FURTHER ORDERED that service of this order as a restraining order be made within this District in the usual manner and in any other District by the United States Marshal for such District delivering a certified copy of this order to the person or persons to be restrained, or to their respective proctors or attorneys.

C. M. HOUGH, D. J.

BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Petitioner.

[Endorsed:]—District Court of the United States, Southern District of New York—In the Matter of the Petition of Furness, Withy & Company, Limited, for Limitation of its Liability as Owner of the steamship *Pomaron*—Order for appraisal and for proof of claims, issuance of monition and injunction—Burlingham, Montgomery & Beecher, Proctors for Petitioner, 27 William Street, Borough of Manhattan, New York City—Received Oct. 13, 1914, Convers & Kirlin—A copy of the within paper has been this day received at this office Oct. 14, 1914, H. Snowden Marshall, U. S. Attorney—Filed Oct. 8, 1914.

77 *Stipulation for Value.*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

78

The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of its Liability as owner of the steamship "POMARON."

Whereas, Furness, Withy & Company, Limited, as owner of the steamship *Pomaron,* has
79 instituted a proceeding in this Court for limitation of liability as such owner in respect of a collision with the steamship *Alleghany,* which occurred at sea February 2, 1912, and the loss and damage consequent thereon, as is more particularly set forth in its petition filed herein October 5, 1914, in which the petitioner prays, among other things, that the Court cause due appraisement to be made of the amount or value of its interest in said steamship *Pomaron* and her pend-
80 ing freight; and that an order be made directing the petitioner to file a stipulation, with surety to be approved by the Court, for the payment into Court of the amount of the petitioner's said interest whenever the Court shall so order; and that a monition may issue to all persons claiming damages for any loss, damage or injury caused by or resulting from the aforesaid collision, citing them to appear before a Commissioner to be

named by this Court and make due proof of their respective claims and to appear and answer the petition herein; and that an injunction issue restraining the commencement, continuation or prosecution of any unit, action or legal proceeding of any nature whatever, except in the present proceeding; and

Whereas, by an order entered herein October 8, 1914, this Court ordered that the petitioner 82 file with the Clerk of this Court a stipulation for value in the sum of $70,500, with good and sufficient surety for the payment of said sum of $70,500 into Court, with interest thereon from February 4, 1912;

Now, therefore, in consideration of the premises, The National Surety Company, having an office and place of business at 115 Broadway in the City of New York, hereby undertakes in 83 the sum of $70,500 that the petitioner, Furness, Withy & Company, Limited, will pay into Court at such time as the Court shall so order the amount or value of the petitioner's interest in the steamship *Pomaron* and her pending freight, with interest thereon from February 4, 1912, and that pending the payment into Court of said amount or value of the petitioner's interest in said steamship *Pomaron* and her pending freight, with interest as aforesaid, this stipula- 84 tion shall stand as security for all claims in said limitation proceeding. Said National Surety Company hereby submits itself to the jurisdiction of the Court and agrees to abide by all orders of the Court, interlocutory and final, and to pay the amount awarded by the final decree rendered by this Court, or by any Appellate Court if an appeal intervene, with interest, unless the

85 *Stipulation for Value.*

amount or value of the petitioner's interest in the steamship *Pomaron* and her pending freight, with interest as aforesaid, shall be paid into Court by the petitioner, in which event this stipulation shall be void.

FURNESS, WITHY & COMPANY, LIMITED,
By H. C. Blackiston, U. S. Manager.

86 NATIONAL SURETY COMPANY, [SEAL]
By Wm. A. Thompson,
Resident Vice President.

Taken and acknowledged as to Furness, Withy & Co., Ltd., this 8th day of October, 1914, before me,

ROSCOE H. HOPPER,
[SEAL] Notary Public,
87 New York County No. 1621.

Attest:

E. M. MCCARTHY,
Resident Assistant Secretary.

88

Stipulation for Value. 89

AFFIDAVIT, ACKNOWLEDGMENT, AND JUSTIFICATION BY GUARANTEE OR SURETY COMPANY

STATE OF NEW YORK,
County of New York, } ss.:

On this 8th day of October, one thousand nine hundred and ....., before me personally came 90
Wm. A. Thompson, known to me to be the Resident Vice-President of the NATIONAL SURETY COMPANY, the corporation described in and which executed the within and foregoing Bond of *S. S. Pomaron* as a surety thereon, and who, being by me duly sworn, did depose and say that he resides in the City of New York, State of New York; that he is the Resident Vice-President of said Company, and knows the corporate seal thereof; that the said NATIONAL SURETY COMPANY, 91
is duly and legally incorporated under the laws of the State of New York; that said Company has complied with the provisions of the Act of Congress of August 13th, 1894; that the seal affixed to the within Bond of *S. S. Pomaron* is the corporate seal of said National Surety Company, and was thereto affixed by order and authority of the Board of Directors of said Company; that he signed his name thereto by like 92
order and authority as Resident Vice-President of said Company; that he is acquainted with E. M. McCarthy and knows him to be the Resident Assistant Secretary of said Company; that the signature of said E. M. McCarthy subscribed to said Bond is in the genuine handwriting of said E. M. McCarthy, and was thereto subscribed by order and authority of said Board of Directors, and in the presence of said deponent; that

the assets of said Company, unencumbered and liable to execution exceed its debts and liabilities of every nature whatsoever, by more than the sum of Two Million ($2,000,000) dollars.

That ..... is agent to acknowledge service for said Company in the Judicial District wherein this bond is given.

WM. A. THOMPSON.
(Deponent's Signature.)

Sworn to, acknowledged before me, and subscribed in my presence this 8th day of October, 1914.

PAUL P. MARCONE,
[SEAL] Notary Public, etc.
(Officer's Signature, description and seal.)

Notary Public for New York County, No. 2386.
Certificate filed in Kings, Queens, Bronx, Richmond and Westchester Counties.
New York County Register's Office No. 6239.
Kings County Register's Office No. 6099.
Bronx County Register's Office No. 632.
My commission expires March 30, 1916.

[Endorsed:] — 58-112 — District Court of the United States, Southern District of New York —In the Matter of the Petition of Furness, Withy & Co., Ltd., for Limitation of its Liability as owner of the S. S. *Pomaron*— Stipulation for Value—Burlingham, Montgomery & Beecher, Proctors for Petitioner, 27 William Street, Borough of Manhattan, New York City—Filed October 9, 1914— ~~R. H. D.~~

Approved Oct. 9. 1914 T. M. Mayo
A. G. J. D. J.

MONITION

97

THE PRESIDENT OF THE UNITED STATES OF AMERICA:

To the Marshal of the United States for the Southern District of New York, GREETING:

WHEREAS, a petition was filed in the District Court of the United States for the Southern District of New York on the 5th day of October, 1914, by Furness, Withy & Company, Limited, praying for a limitation of its liability as owner 98
of the steamship *Pomaron,* concerning the loss, damage, injury and destruction occasioned by or resulting from the collision between the steamship *Pomaron* and the steamship *Alleghany* on February 2, 1912, and the subsequent sinking of said steamship *Alleghany,* for the reasons mentioned in said petition, and praying that a monition issue out of said Court citing all persons claiming damages for any and all losses, damages or injuries 99
to appear before said Court and make due proof of their respective claims, and answer the allegations of said petition, and that if it shall appear that the petitioner is not liable for any such losses, damages or injuries it may be so finally decreed by this Court; and

WHEREAS, by an order entered herein October 8, 1914, this Court has directed that on the filing of a stipulation for value in the sum of $70,500, with good and sufficient surety, a monition issue 100
out of and under the seal of this Court against all persons claiming damages for any and all losses, damages or injuries occasioned by or resulting from the collision between the steamship *Pomaron* and the steamship *Alleghany* on February 2, 1912, and the subsequent sinking of said steamship *Alleghany,* citing them to appear before this Court and make due proof of their respective

101 *Monition.*

claims on or before the 18th day of January, 1915, at 10:30 o'clock in the forenoon, and appointing Alex. Gilchrist, Jr., Esq., as Commissioner, before whom proof of claims which shall be presented in pursuance of said monition shall be made subject to the right of any person to controvert; and

102 WHEREAS, on October 9, 1914, the petitioner duly filed with the Clerk of this Court a stipulation for value in the sum of $70,500 undertaking to pay said sum on the entry of the final decree rendered by this Court, or by any Appellate Court if an appeal intervene, with interest from February 4, 1912;

YOU ARE, THEREFORE, COMMANDED to cite all persons claiming damages for any loss, damage,
103 injury or destruction occasioned by said collision or by the subsequent sinking of said steamship to appear before said Court and make due proof of their respective claims, before Alex. Gilchrist, Jr., Esq., Commissioner, at his office Post Office Building, New York City, on or before the 18th day of January, 1915, at 10:30 o'clock in the forenoon, and you are also commanded to cite such claimants to appear and answer the petition herein, on or before said last named date,
104 or within such further time as said Court may grant, and to have and receive such relief as may be due.

And what you have done in the premises, do you then make return to this Court, together with this writ.

WITNESS the HON. CHARLES M. HOUGH, Judge of the District Court of the United States for the Southern District of New York, this 9th day

of October, in the year One thousand nine hundred and fourteen, and of the Independence of the United States the one hundred and thirty-ninth.

ALEX. GILCHRIST, JR.,
Clerk.

[SEAL]

BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Petitioner.

[Endorsed:] — District Court of the United States, Southern District of New York—In the Matter of the Petition of Furness, Withy & Co., Ltd., for limitation of its Liability as owner of the steamship *Pomaron*—Monition — Burlingham, Montgomery & Beecher, Proctors for Petitioner, 27 William Street, Borough of Manhattan, New York City—Copy received Oct. 13, 1914, Williams & Stevenson, Proctor for Boston Ins. Co.—Harrington, Bigham & Englar, 64 Wall St., New York, Copy received Oct. 13, 1914.—A copy of the within paper has been this day received at this office, Oct. 14, 1914, H. Snowden Marshall, U. S. Attorney—Filed Oct. 9, 1915.

109 *Answer.*

DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

In the Matter

110 of

The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of its Liability as owner of the steamship "POMARON." } Answer.

The BOSTON INSURANCE COMPANY, claimant
111 herein, answering the petition of Furness, Withy & Company, Limited, alleges as follows:

FIRST: The claimant admits the allegations of the "First," "Second," "Fifth," "Sixth," and "Seventh" paragraphs of the petition.

SECOND: The claimant denies the allegations of the "Third," and "Fourth," paragaraphs of the petition, except that it admits that the collision and the loss, damage, injury and de-
112 struction resulting therefrom, were occasioned and incurred without the privity or knowledge of the petitioner.

Furthering answering the petition, the claimant alleges:

THIRD: That it heretofore filed a libel in this Court against Furness Withy & Company, Limited, the petitioner, to recover damages for

loss resulting from the collision between the said Steamship *Pomaron* and the Steamship *Alleghany* on February 2, 1912; and thereafter, on October 3, 1914, a final decree was entered in said action adjudging that the collision was due to the negligence and fault in the navigation of the said Steamship *Pomaron,* and further adjudging and decreeing that the Boston Insurance Company, the claimant herein, should recover against Furness, Withy & Company, Limited, the petititoner, the sum of $9,768.93, with interest thereon until paid.

FOURTH: That by reason of the said decree the matters set forth in the "Third" and "Fourth" paragraphs of the petition are *res adjudicata.*

WHEREFORE the claimant prays that the petition may be dismissed, except as to the claim of the petitioner for limitation of liability, with costs to the claimant.

WARD D. WILLIAMS,
Proctor for Claimant,
Boston Insurance Company,
Office and P. O. Address,
No. 27 Cedar Street,
Borough of Manhattan,
New York City.

117 *Answer.*

STATE OF NEW YORK, }
County of New York, } ss.:

WARD WILLIAMS, being duly sworn, deposes and says that he is the Vice-President of the Boston Insurance Company, the claimant herein, and that the facts as set forth in the foregoing answer are true to the best of his knowl-
118 edge, information and belief.

WARD WILLIAMS.

Sworn to before me, this 16th }
day of January, 1915. }

BALTHASAR J. CARUSO,
[SEAL] Notary Public,
Kings County.

Certificate filed in N. Y. Co.

119 [Endorsed:]—District Court of the U. S., Southern District of New York—In the Matter of the Petition of Furness, Withy & Company, Limited, for Limitation, etc., of the Steamship *Pomaron*—Answer—Ward D. Williams, Proctor for Claimant, Boston Insurance Co., 27 Cedar Street, Borough of Manhattan, City of New York—Copy received, Jan. 18, 1915, Burlingham, Montgomery & Beecher—Filed, Jan. 18,
120 1915.

Answer. 121

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

The answer of the Atlantic Mutual Insurance Company to the petition of Furness, Withy & Company, Limited, owner of the Steamship *Pomaron* in a cause of limitation of liability, civil and maritime, alleges as follows: 122

First: The Atlantic Mutual Insurance Company is a corporation organized under the laws of the State of New York, and has duly filed its claim in this proceeding with the commissioner appointed by this Court.

Second: It admits the allegations contained in the first, second and third articles of the petition. 123

Third: It admits that the collision between the Steamship *Pomaron* and the Steamship *Alleghany*, mentioned and described in the petition and the loss, damage, injury and destruction resulting therefrom were occasioned and incurred without the privity or knowledge of the petitioner; and that fault on the part of those in charge of the navigation of the Steamship *Alleghany* contributed to the collision, in that they failed to 124 maintain a good lookout and in that there was no officer or any competent person in charge of her navigation for some time prior to the collision.

Except as hereinabove specifically admitted it denies the allegations of the Fourth article of the petition and alleges:

That at the time those on the *Pomaron* first sighted the *Alleghany* at about 10:35 and un-

125 *Answer.*

til after the collision occurred at about 11:24 A. M. the weather was clear and the *Alleghany* was always in view from the *Pomaron.* The *Alleghany* was steering a course of S. 2° W. magnetic. That although the vessels were on crossing courses no proper compass bearing of the *Alleghany* was at any time taken or noted by the officer in charge of the *Pomaron.* When
126 the two vessels were at least one mile apart, and from five to seven minutes before collision the *Pomaron* blew a one blast signal and ported her helm. Within one to three minutes thereafter the *Alleghany* blew a signal of two blasts, whereupon and when the two vessels were half a mile or more apart, the *Pomaron* put her helm hard a port and her engines full speed astern. The collision happened four minutes thereafter, the
127 bow of the *Pomaron* striking the starboard side of the *Alleghany* about 100 feet from the latter's stern. Shortly before the collision the *Alleghany's* helm was put hard a starboard changing her heading from three to four points before the collision occurred.

It alleges and charges that the collision was due to fault on the part of the *Pomaron,* in that (1) no proper compass bearing of the *Alleghany* was taken by those in charge of the *Pomaron* at
128 any time; (2) that having the *Alleghany* on her port bow, the *Pomaron* failed to keep her course and changed her course to port when the vessels were a mile or more apart; (3) in reversing her engines when the vessels were half a mile or more apart.

FOURTH: It admits the allegations of the Fifth article of the petition.

Answer.

FIFTH: It admits the allegations of the Sixth article of the petition, except that it denies that the value of the petitioners' interest in the *Pomaron* and her pending freight is only $70,419.14. It alleges that shortly after said collision the Hamburg American Line owner of the Steamship *Alleghany* filed its petition in this Court for a limitation of its liability for the loss, damage and injury resulting from the collision described in the petition herein; and that the petitioner Furness, Withy & Company, Limited, filed in said proceeding a claim for the sum of $16,610 for the damages sustained by the *Pomaron* in said collision; that thereafter and on or about the 29th day of September, 1913, a final decree was made by this Court in said proceeding, whereby it was ordered, adjudged and decreed that this petitioner Furness, Withy & Company, Limited, recover from the Hamburg American Line the sum of $9,122.83 on account of the petitioner's said claim. That thereafter and on or about the 29th day of September, 1913, the said Hamburg American Line paid to the petitioner the said sum of $9,122.83, and that said sum should be added to the sum of $70,419.14 which the petitioner alleges to be the value of the *Pomaron* and her pending freight.

SIXTH: It admits the allegations of the Seventh article of the petition.

SEVENTH: It admits the jurisdiction of this Court but denies the general allegation in the Ninth article of the petition that all and singular the premises of the petition are true.

Wherefore this claimant prays that the prayer of said petition that the petitioner be adjudged

not liable to any extent for any loss, damage or injury or for any claim arising out of or in consequence of said collision, be denied with costs.

KNEELAND, HARISON & HEWITT,
Proctors for Atlantic Mutual Ins. Co., Claimant.

Southern District of New York, ss.:

CORNELIUS ELDERT being duly sworn, deposes and says that he is Vice President of the claimant Atlantic Mutual Insurance Company, and that the foregoing answer is true to the best of his knowledge, information and belief.

CORNELIUS ELDERT.

Sworn to before me this 13th day of January, 1915.

WILLIAM DEVINTER,
[SEAL] Notary Public,
Kings County.
Certificate filed in New York County.
Commission expires March 30, 1916, No. 14.

[Endorsed:]—58-112—District Court of the United States for the Southern District of New York—In the Matter of the libel and petition of Furness, Withy & Company, Limited, owner of the Steamship *Pomaron* in a cause of limitation of liability—Answer of Atlantic Mutual Insurance Company—Kneeland, Harison & Hewitt, Proctors for Claimant, No. 42 Cedar Street, New York City. —To Messrs. Burlingham, Montgomery & Wheeler, 27 William St.—Copy received Burlingham, Montgomery & Beecher January 19, 1915—Filed January 18, 1915.

Answer. 137

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

The answer of the Federal Insurance Company, Sea Insurance Company, Ltd., and London Assurance Corporation, Claimants, to the petition of Furness, Withy & Company, Limited, owner of the Steamship *Pomoran*, in a cause of limitation of liability, alleges as follows: 138

First: The Federal Insurance Company is a corporation organized under the laws of the State of New Jersey and the Sea Insurance Company, Ltd., and London Assurance Corporation are corporations organized under the laws of the United Kingdom of Great Britain and Ireland. These claimants have duly filed claims in this proceeding with the Commissioner appointed by this Court. 139

Second: They admit the allegations of the first, second and third articles of the petition.

Third: They admit that the collision between the Steamship *Pomaron* and the Steamship *Alleghany* alleged in the petition and the loss, damage, injury and destruction resulting therefrom were occasioned and incurred without the privity or knowledge of the petitioner, and that fault on the part of the Steamship *Alleghany* 140 contributed to said collision in that she failed to maintain a good lookout and in that no officer or competent person was in charge of her navigation for some time prior to said collision.

Except as hereinabove specifically admitted they deny the allegations of the fourth article of the petition.

Fourth: They admit the allegations of the fifth article of the petition.

141 *Answer.*

FIFTH: They admit the allegations of the sixth article of the petition except that they deny that the value of the Steamship *Pomaron* and her pending freight is only $70,419.14, and allege that shortly after the said collision between the *Pomaron* and the *Alleghany,* the Hamburg-American Line, owner of the Steamship *Alleghany,* filed in this Court a petition
142 for limitation of its liability for the loss, damage and injury resulting from said collision, that the Petitioner, Furness, Withy & Company, Limited, filed its claim in said proceeding for the sum of $16,610. the amount of the damages to the Steamship *Pomaron* by said collision; that thereafter and on or about the 29th day of September, 1913, a final decree was made by this Court in said proceeding
143 whereby it was ordered, adjudged and decreed that Furness, Withy & Company, Limited, recover of the Hamburg-American Line the sum of $9,122.83 on account of the petitioner's said claim; that thereafter and on or about the 29th day of September, 1913, the said Hamburg-American Line paid to the petitioner the said sum of $9,122.83 and that said sum should be added to the $70,419.14, which is alleged in said petition to be the value of the *Pomaron* and her pending
144 freight.

SIXTH: They admit the allegations of the Seventh article of the petition.

SEVENTH: They admit the jurisdiction of this Court but deny the general allegation in the Ninth article of the petition that all and singular the premises thereof are true.

EIGHTH: And further answering said petition these claimants allege:

Answer.

That on the 3rd day of December, 1912, they filed in this Court a joint libel against the petitioner Furness, Withy & Company, Limited, to recover damages sustained by them by reason of the collision between the Steamships *Pomaron* and *Alleghany*, alleged and described in the petition herein, and that on the 8th day of January, 1913, the petitioner appeared in said action and filed its answer to the libel of these claimants. That such proceedings were thereafter had in said action, that this Court made a final decree therein on the 13th day of June, 1913, adjudging that these claimants recover against Furness, Withy & Company, Limited, damages and interest amounting together to $23,980.99 together with $54.05 costs.

That thereafter Furness, Withy & Company, Limited, the petitioner herein, appealed from the aforesaid decree of this Court to the United States Circuit Court of Appeals for the Second Circuit, and the United States Circuit Court of Appeals having heard the said appeal, issued its Mandate bearing date the 23rd day of June, 1914, affirming the said decree of this Court entered on the 13th day of June, 1913, with interest and with costs of said appeal to the appellees, these claimants, taxed at $38.50, which Mandate was thereafter duly filed in this Court. That on the 3rd day of October, 1914, a decree was made by this Court wherein it was ordered, adjudged and decreed that the said Mandate of the United States Circuit Court of Appeals for the Second Circuit be made the judgment of this Court.

That the claim filed by these claimants in this proceeding is for the damages awarded by the said decree of this Court in the action aforesaid, with interest thereon; and that by the decrees

149 *Answer.*

aforesaid the liability of the petitioner to these claimants has become and now is *res adjudicata*.

WHEREFORE these claimants pray that the prayer of the petition herein that the petitioner be adjudged not liable to any extent for the consequence of said collision be denied with costs.

KNEELAND, HARISON & HEWITT,
150 Proctors for Claimants.

Southern District of New York, ss.:

SIDNEY CHUBB, being duly sworn, deposes and says that he is Treasurer of the Federal Insurance Company, and that the foregoing answer is true to the best of his knowledge, information and belief.

SIDNEY CHUBB.

151 Sworn to before me this 14th day of January, 1915.

LOUIS H. MAY,
[SEAL] Notary Public,
Kings County.

Certificate filed in New York County.

[Endorsed:]—58-112—District Court of the United States, for the Southern District of New York—In the Matter of the libel and
152 petition of Furness, Withy & Company, Limited, owner of the Steamship *Pomaron* in a cause of limitation of liability—Answer of Federal Insurance Company, *et al.*—Kneeland, Harison & Hewitt, Proctors for Claimant, No. 42 Cedar Street, New York City—To Messrs. Burlingham, Montgomery & Beecher, 27 William St.—Copy Received Burlingham, Montgomery & Beecher, Jan. 19, 1915—Filed Jan. 18, 1915.

Notice of Appearance. 153

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter
of
The petition of FURNESS, WITHY & COMPANY, LTD., for limitation of its liability as owner of the *S. S. Pomaron.* 154

PLEASE TAKE NOTICE that I appear for the Boston Insurance Company, claimant in the above entitled cause.

Dated, New York, January 15, 1915.

Yours, etc.,
WARD D. WILLIAMS, 155
Proctor for Claimant,
Boston Insurance Company,
Office and P. O. Address,
No. 27 Cedar Street,
Borough of Manhattan,
New York City.

To:
BURLINGHAM, MONTGOMERY & BEECHER, ESQS.,
Proctors for Petitioner.
ALEXANDER GILCHRIST, JR., ESQ., 156
Clerk.

[Endorsed:] District Court of the United States, Southern District of New York—In the Matter of the Petition of Furness, Withy & Company, Ltd., for limitation, etc., of the Steamship *Pomaron*—Original—Notice of appearance, Ward D. Williams, Proctor for Claimant, 27 Cedar Street, Borough of Manhattan, City of New York—Filed Jan. 18, 1915.

157 *Notice of Appearance.*

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

158 The petition of FURNESS, WITHY & COMPANY, LTD., for limitation of its liability as owner of the *S. S. Pomaron.*

PLEASE TAKE NOTICE that Harrington, Bigham & Englar appear on behalf of Antoine Joseph, one 159 of the claimants in this cause.

Dated, New York, January 18, 1915.

HARRINGTON, BIGHAM & ENGLAR,
Proctors for Antoine Joseph.

To:

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Petitioner.

ALEXANDER GILCHRIST, ESQ.,
Clerk of the U. S. District Court for the
160 Southern District of New York.

[Endorsed:]—United States District Court, Southern District of New York—In the Matter of the petition of Furness, Withy & Company, Ltd., for limitation of liability as owner of the Steamship *Pomaron*—Original—Notice of appearance, Harrington, Bigham & Englar, Attorneys for Antoine Joseph, 64 Wall Street, New York City—Filed January 18, 1915.

Notice of Appearance. 161

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The petition of FURNESS, WITHY & COMPANY, LTD., for limitation of its liability as owner of the *S. S. Pomaron.* 162

PLEASE TAKE NOTICE that Harrington, Bigham & Englar appear on behalf of Eugene J. F. Coleman, one of the claimants in this cause. 163

Dated, New York, January 18, 1915.

HARRINGTON, BIGHAM & ENGLAR,
Proctors for Eugene J. F. Coleman.

To:

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Petitioner.

ALEXANDER GILCHRIST, ESQ.,
Clerk of the U. S. District Court for the Southern District of New York. 164

[Endorsed:]—United States District Court, Southern District of New York—In the Matter of the petition of Furness, Withy & Company, Ltd., for limitation of liability as owner of the Steamship *Pomaron*—Original—Notice of appearance—Harrington, Bigham & Englar, Attorneys for Eugene J. F. Coleman, 64 Wall Street, New York City—Filed January 18, 1915.

165 *Exception to Provisional Valuation.*

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

166 of

The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of its Liability as owner of the steamship "POMARON."

The Federal Insurance Company, Sea Insur-
167 ance Company, Limited, and London Assurance Corporation, and the Atlantic Mutual Insurance Company, Claimants herein, hereby except to the provisional valuation of the Steamship *Pomaron* and her pending freight, at $70,419.14 in the order of this court entered herein, October 8, 1914, and to the amount of the stipulation for value filed by the petitioner herein, on the ground and for the reason that the petitioner recovered and received from the Hamburg-American Line,
168 owner of the Steamship *Alleghany,* on or about the 29th day of September, 1913, the sum of $9,122.82 in part payment of the damages sustained by the said Steamship *Pomaron* by the collision alleged in the petition herein, and has failed to include said sum of $9,122.82 in the provisional valuation of the *Pomaron* and her

pending freight and in the stipulation for value filed in this proceeding.

Dated, January 18th, 1915.

KNEELAND, HARISON & HEWITT,
Proctors for Federal Ins.
Co. *et al.*, Claimants.

To:

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER, 170
Proctors for Petitioner,
ALEXANDER GILCHRIST, JR., ESQ.,
Clerk.

[Endorsed:] — 58-112 — United States District Court, Southern District of New York—In the Matter of the Petition of Furness, Withy & Company, Limited, for limitation of its liability as owner of the Steamship *Pomaron*—Exception to Provisional Valuation 171 —Kneeland, Harison & Hewitt, Proctors for Federal Ins. Co., *et al.*, Claimants, 43 Cedar Street, New York City, N. Y.—To Messrs. Burlingham, Montgomery & Beecher, 27 William St.—Copy received, Burlingham, Montgomery & Beecher, Jan. 19, 1915. —Filed January 18, 1915.

172

173 *Exception to Provisional Valuation.*

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

174

The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of its Liability as owner of the steamship "POMARON."

The Yang-tsze Insurance Association, Limited, U. S. Lloyds, Indemnity Mutual Marine Insurance Company, Limited, Nord-Deutsche Insur-
175 ance Company, Union Insurance Society of Canton, Limited, Commercial Union Assurance Company, Limited, the Corporation of Lloyds and the Aetna Insurance Company, claimants herein, except to the provisional valuation of the steamship *Pomaron* and her pending freight at $70,-419.14 in the order of this court entered herein on October 8, 1914, and to the amount of the stipulation for value filed by the petitioner herein.

176

CONVERS & KIRLIN,
Proctors for Claimants, Yang-tsze Ins. Assoc. Ltd., U. S. Lloyds, Indemnity Mut. Mar. Ins. Co. Ltd., Nord-Deutsche Ins. Co., Union Ins. Soc. of Canton, Ltd., Commercial Union Assur. Co., Ltd., the Corporation of Lloyds and Aetna Ins. Co.

Exception to Provisional Valuation. 177

To:

ALEXANDER GILCHRIST, JR., ESQ.,
Clerk.

BURLINGHAM, MONTGOMERY & BEECHER, ESQS.,
Proctors for Petitioner.

[Endorsed:]—United States District Court, Southern District of New York—In the Matter of the Petition of Furness, Withy & Co. Ltd., for Limitation of its Liability, as Owner of the Steamship *Pomaron*.—Exceptions.—Convers & Kirlin, Proctors for Claimants, 27 William Street, New York, N. Y.—Filed January ~~18~~ 26, 1915. 178

179

180

181 *Notice of Appearance.*

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

182 of

The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of Liability as owner of the steamship "POMARON."

PLEASE TAKE NOTICE that Nord-Deutsche Insur-
183 ance Company, Union Insurance Society of Canton, Limited, Commercial Union Assurance Company, Limited, the Corporation of Lloyds and the Aetna Insurance Company appear herein as claimants-respondents and that we appear as their proctors and demand that all papers be served on us at our office, Number 27 William Street, Borough of Manhattan, City of New York, N. Y.

Dated, New York, January 16, 1915.

184

CONVERS & KIRLIN,
Proctors for Claimants-Respondents,
27 William Street,
Borough of Manhattan,
City of New York, N. Y.

Notice of Appearance. 185

To:

ALEXANDER GILCHRIIST, JR., ESQ.,
Clerk.

BURLINGHAM, MONTGOMERY & BEECHER, ESQRS.,
Proctors for Libelant,
27 William Street
Borough of Manhattan,
City of New York, N. Y.

186 [Endorsed:]—United States District Court, Southern District of New York—In the Matter of the Petition of Furness, Withy & Company, Ltd., for limitation of liability, as owner of the Steamship *Pomaron*—Notice of appearance—Convers & Kirlin, Proctors for Claimants-Respondents, 27 William Street, New York, N. Y.—Filed January 18, 1915—Copy received, Burlingham, Montgomery & Beecher, January 18, 1915. 187

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK.

188

In the Matter

of

The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of Liability as owner of the steamship "POMARON."

PLEASE TAKE NOTICE that Yang-Tsze Insurance Association, Limited, U. S. Lloyds and the Indemnity Mutual Marine ~~Insurance~~ Assurance Company,

189 *Notice of Appearance.*

Limited, appear herein as claimants-respondents and that we appear as their proctors and demand that all papers be served on us at our office, Number 27 William Street, Borough of Manhattan, City of New York, N. Y.

Dated, New York, January 16, 1915.

CONVERS & KIRLIN,
190 Proctors for Claimants-Respondents,
27 William Street,
Borough of Manhattan,
City of New York, N. Y.

To:

ALEXANDER GILCHRIST, JR., ESQ.,
Clerk.

BURLINGHAM, MONTGOMERY & BEECHER, ESQRS.,
Proctors for Libelant,
191 27 William Street,
Borough of Manhattan,
City of New York, N. Y.

[Endorsed:]—United States District Court, Southern District of New York—In the Matter of the Petition of Furness, Withy & Company, Ltd., for limitation of liability, as owner of the Steamship *Pomaron*—Notice of appearance—Convers & Kirlin, Proctors for
192 Claimants-Respondents, 27 William Street, New York, N. Y.—Filed January 18, 1915—Copy received, Burlingham, Montgomery & Beecher, January 18, 1915.

Affidavit of Publication. 193

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK.

In the Matter
of
The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of Liability as owners of the steamship "POMARON." 194

STATE OF NEW YORK,
City and County of New York, } ss.:

Jno. J. Kelley, being duly sworn, says he is advertising clerk of the Evening Mail, a daily newspaper published in the City and County of New York, and that the notice, of which the annexed is a printed copy, has been regularly published in the said Evening Mail fourteen times successively, commencing on the 13th day of October, 1914, and the rate charged and paid for the publication of such notice in the annexed bill is not in excess of the commercial rate to private individuals. 195

JNO. J. KELLEY. 196

Sworn to before me, this 29th day of October, 1914.

H. MODERY, Notary Public

Kings County Certificate filed in N. Y. Co.,
Kings County No. 89,
Kings Register's No. 6084,
New York County No. 97,
New York Register's No. 6212
Commission expires March 30, 1916.

(Seal)

197 *Affidavit of Publication.*

United States of America, Southern District of New York, Citation:

Whereas a petition was filed in the District Court of the United States, for the Southern District of New York, on the 5th day of October, 1914, by Furness, Withy & Company, Ltd., praying for the limitation of its liability as owners
198 of the Steamship *Pomaron,* concerning the loss, damage, injury, and destruction occasioned by the collision between the Steamship *Pomaron* and the Steamship *Alleghany,* for the reasons mentioned by said petition:

And, whereas, on October 9, 1914, the petitioner filed with the Clerk of this Court a stipulation for the valuation in the sum of $70,500, being the appraised value of said Steamsh[ip] *Pomaron,* undertaking to pay the said sum of [$70,500] upon
199 the final decree rendered by th[is Court] or by any Appellate Court if an [appeal be] taken, with interest, from the 4th [day of] February, 1912:

Now, therefore, pursuant to the monition issued out of said Court, to me directed and delivered, I do hereby cite all persons claiming damages, for any and all losses, damages or injuries, caused by or resulting from the collision between the Steamship *Pomaron,* and the Steam-
200 ship Alleghany on February 2, 1912, and the subsequent sinking of said Steamship *Alleghany* to appear and make due proof of their respective claims before Alexander Gilchrist, Jr., Esq., United States Commissioner, at his office, Post Office Building, New York City on or before January 18, 1915 at 10:30 o'clock in the forenoon of that day, and also to appear before said Court at the Court Rooms in the Woolworth

In Feb. 2, 1912 and the subsequent sinking of the Steamship Alleghany

Building, New York on the 18th day of January, 1915 at 10:30 o'clock in the forenoon of that day and answer the petition herein; otherwise they will be defaulted and barred from participation in said stipulation.

Dated, New York, October 9, 1914.

WILLIAM HENKEL,
U. S. Marshall for the Southern District of New York.
BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Petitioner.

MONITION.

THE PRESIDENT OF THE UNITED STATES OF AMERICA:

To the Marshal of the United States for the Southern District of New York, GREETING:

WHEREAS, a petition was filed in the District Court of the United States for the Southern District of New York on the 5th day of October, 1914, by Furness, Withy & Company, Limited, praying for a limitation of its liability as owner of the steamship *Pomaron*, concerning the loss, damage, injury and destruction occasioned by or resulting from the collision between the steamship *Pomaron* and the steamship *Alleghany* on February 2, 1912, and the subsequent sinking of said steamship *Alleghany*, for the reasons mentioned in said petition, and praying that a monition issue out of said Court citing all persons claiming damages for any and all losses, dam-

205 ages or injuries to appear before said Court and make due proof of their respective claims, and answer the allegations of said petition, and that if it shall appear that the petitioner is not liable for any such losses, damages or injuries it may be so finally decreed by this Court; and

206 WHEREAS, by an order entered herein October 8, 1914, this Court has directed that on the filing of a stipulation for value in the sum of $70,500, with good and sufficient surety, a monition issue out of and under the seal of this Court against all persons claiming damages for any and all losses, damages or injuries occasioned by or resulting from the collision between the steamship *Pomaron* and the steamship *Alleghany* on February 2, 1912, and the subsequent sinking of
207 said steamship *Alleghany*, citing them to appear before this Court and make due proof of their respective claims on or before the 18th day of January, 1915, at 10:30 o'clock in the forenoon, and appointing Alex. Gilchrist, Jr, Esq., as Commissioner, before whom proof of claims which shall be presented in pursuance of said monition shall be made subject to the right of any person to controvert; and

208 WHEREAS, on October 9, 1914, the petitioner duly filed with the Clerk of this Court a stipulation for value in the sum of $70,500, undertaking to pay said sum on the entry of the final decree rendered by this Court, or by any Appellate Court if an appeal intervene, with interest from February 4, 1912;

YOU ARE, THEREFORE, COMMANDED to cite all persons claiming damages for any loss, damage, in-

jury or destruction occasioned by said collision or by the subsequent sinking of said steamship to appear before said Court and make due proof of their respective claims, before Alex. Gilchrist, Jr., Esq., Commissioner, at his office Post Office Building, New York City, on or before the 18th day of January, 1915, at 10:30 o'clock in the forenoon, and you are also commanded to cite such claimants to appear and answer the petition 210 herein, on or before said last named date, or within such further time as said Court may grant, and to have and receive such relief as may be due.

And what you have done in the premises, do you then make return to this Court, together with this writ.

WITNESS the HON. CHARLES M. HOUGH, Judge of the District Court of the United States for the 211 Southern District of New York, this 9th day of October, in the year One thousand nine hundred and fourteen, and of the Independence of the United States the one hundred and thirty-ninth.

ALEX. GILCHRIST, JR.,
[SEAL] Clerk.

BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Petitioner.

[Endorsed:] — District Court of the United 212 States, Southern District of New York—In the Matter of the Petition of Furness, Withy & Company, Limited, for Limitation of its Liability as Owner of the steamship *Pomaron*—Monition—Burlingham, Montgomery & Beecher, Proctors for Petitioner, 27 William Street, Borough of Manhattan, New York City—Filed Jan. 18, 1914.

213 *Return of Monition.*

I do hereby certify that in obedience to the within Monition I have cited all persons claiming damages for any loss, damage, injury or destruction occasioned by said collision or by the subsequent sinking of said St. Ship, to be and appear before this court on the 18th day of January, 1915, at 10:30 A. M., as herein required by publication of Notice in the Evening
214 Mail, a newspaper published in the City of New York by the Evening Mail Co. as required by the within Monition and annexed order, and as appears by proof of publication hereto annexed.

Dated, New York, January 18, 1915. Wm Heuvel

~~N. V. Neuber,~~
U. S. Marshal,
S. D., N. Y.

215

216

Order on Default. 217

At a Stated Term of the District Court of the United States for the Southern District of New York, held at the Court Rooms, Borough of Manhattan, City of New York, on the 18th day of January, 1915.

Present—Hon. Augustus N. Hand, 218
Judge.

In the Matter
of
The Petition of Furness, Withy & Company, Limited, for Limitation of Liability as owner of the steamship "Pomaron." 219

A libel and petition having been filed in this Court on the 5th day of October, 1914, by Furness, Withy & Company, Limited, owner of the steamship *Pomaron,* and an order having been thereupon duly entered herein on the 8th day of October, 1914, directing that a monition issue out of this Court against all persons claiming damages for any and all losses, damage or injuries occasioned by, or resulting from, the collision between the steamship *Pomaron* and steamship *Alleghany* on February 2d, 1912, and the subsequent sinking of the steamship *Alleghany* and damage to the steamship *Pomaron,* citing all such persons to appear before this Court and make due proof of their respective claims on or before the 18th day of January, 1915, at 10:30 o'clock in the forenoon, and further ordering that Alex. Gilchrist, Jr., Esq., be appointed Commissioner to take proof of claims presented pur- 220

suant to said monition, and a monition having been duly issued on the 9th day of October, 1914, in pursuance of said order for monition, and said monition having been duly returned by the Marshal of the United States for the Southern District of New York, with proof of citation of all parties interested, and Alex. Gilchrist, Jr., Esq., having duly made his report to this Court on January 18th, 1915, showing all claims presented in pursuance of said monition on or before January 18th, 1915, the return day of said monition, now on motion of Burlingham, Montgomery & Beecher, proctors for petitioner, Furness, Withy & Company, Limited, it is

ORDERED, ADJUDGED AND DECREED that the default of all persons who shall not have appeared or presented claims on or before this day, January 18th, 1915, be and the same hereby is directed to be entered.

AND IT IS FURTHER ORDERED that the time of petitioner or any claimant filing a claim to except to or file objections to any claim shall be extended to and include ten days after entry of interlocutory decree.

AND IT IS FURTHER ORDERED that the time of all claimants to answer the petition herein shall extend to and include the 1st day of February, 1915.

AUGUSTUS N. HAND,
D. J.

A. G. Jr.

[Endorsed:] — District Court of the United States, Southern District of New York—In the Matter of the Petition of Furness, Withy & Company, Limited, for Limitation of Liability, as owner of the steamship *Pomaron*—Order on Default of Return of Monition—Burlingham, Montgomery & Beecher, Proctors for Petitioner, 27 William Street, Borough of Manhattan, New York City—Received Convers & Kirlin, January 25, 1915.

Commissioner's Report. 225

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The Libel and Petition of FURNESS, WITHY & COMPANY, LTD., as owners of the steamship "POMARON" for Limitation of Liability. 226

To the United States District Court for the Southern District of New York:

I, Alex. Gilchrist, Jr., the Commissioner named in the order of this court made and entered in this proceeding on the 8th day of ~~November~~ October, 1914, before whom the claims of all persons for any loss, damage or injury, occasioned by or resulting from the collision set forth in the libel and petition herein, were required to be presented, on or before the 18th day of January, 1915, do respectfully report that the following claims have been presented to me: 227 228

The Norddeutsche Ins. Co., Union Ins. Co., of Canton, Ltd., the Corporation of Lloyds and Aetna Ins. Co., amount of judgment recovered in the U. S. District Court, S. D. of New York, on June 12, 1913, $14,252.02

229 *Commissioner's Report.*

M. H. Silvera, judgment, October 2, 1914, 2,135.59
Laura Moore, judgment, June 13, 1913, 11,977.41
Walter Oloffson, *et al.*, judgment, October 3, 1914, 2,039.97
Eugene J. F. Coleman, judgment, June 13, 1913, 5,706.27
230 Eugene J. F. Coleman, judgment, October 6, 1914, 35.00
O. G. Orr, judgment, June 13, 1913, 28,250.85
F. W. Van Praag, judgment, June 13, 1913, 1,115.57
M. K. Weidensaul, judgment, June 13, 1913, 1,118,27
L. Bertschman, judgment, June 13, 1913, 30,815.22
231 Hazan & Co., judgment, October 3, 1914, 1,247.35
Yang Tsze Ins. Ass. Ltd., *et al.*, judgment, June 12, 1913, 19,737.59
and
October 2, 1914, 74.91
Boston Ins. Co., judgment, October 3, 1914, 9,768.93
Federal Ins. Co. *et al.*, judgment, June 13, 1913, 24,035.04
232 and
October 3, 1914, 38.50
U. S. of America, judgment, June 13, 1913, 5,470.00
G. Kattan, for damages for loss of cargo, 161.37
J. L. de Picciotto, for damages for loss of cargo, 1,145.30

A. Joseph, for damages for loss of cargo, 1,126.33

H. C. Bock, for damages for loss of cargo, 1,125.03

W. D. Despard, for damages for loss of cargo, 14,831.24

Robert Dutton & Co., for damages for loss of cargo, 1,658.72

234

Atlantic Mutual Ins. Co., for damages for loss of cargo, 16,745.00

M. Dahens, for damages for loss of cargo, 522.~~00~~ 74

H. Borday, for damages for loss of cargo, 198.69

A. Gagny, for damages for loss of cargo, 266.94

That the said claims are hereto annexed and made a part of this report. 235

That no other claims have been presented to me; all of which is respectfully submitted.

New York, January 18, 1915.

ALEXANDER GILCHRIST, Jr.,
Commissioner.

236

237 *Claim.*

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter of 238 The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of Liability as owner of the steamship "POMARON."	Claim of Nord Deutsche Insurance Company, *et al.*

Now comes Nord-Deutsche Insurance Company, Union Insurance Society of Canton, Lim-
239 ited, Commercial Union Assurance Company, Limited, the Corporation of Lloyds and the Aetna Insurance Company and present their claims against Furness, Withy & Company, Limited, as follows:

FIRST: At all the times hereinafter mentioned the libelant, Nord-Deutsche Insurance Company was and it still is a corporation organized and existing under the laws of the German Empire,
240 and is engaged in the business of marine insurance, with an office for the transaction of business at No. 3 So. William Street, in the Borough of Manhattan, City of New York.

SECOND: At all the times hereinafter mentioned, the libelant, Union Insurance Society of Canton, Limited, was and it still is a corporation duly organized and existing under the laws of the Colony of Hong Kong, and is engaged in the business of marine insurance, with an office for

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the transaction of business at No. 3 So. William Street, in the Borough of Manhattan, City of New York.

THIRD: At all the times hereinafter mentioned, the libelant, Commercial Union Assurance Company, Limited, was and it still is a corporation, duly organized and existing under the laws of the United Kingdom of Great Britain and Ireland, and is engaged in the business of marine insurance, with an office for the transaction of business at No. 51 Wall Street, Borough of Manhattan, City of New York.

242

FOURTH: At all the times hereinafter mentioned, The Corporation of Lloyds was and it still is a corporation duly organized and existing under the laws of the United Kingdom of Great Britain and Ireland, and is engaged in the business of marine insurance, with an office for the transaction of business at No. 66 Beaver Street, in the Borough of Manhattan, City of New York.

243

FIFTH: At all the times hereinafter mentioned, the libelant, Aetna Insurance Company, was and it still is a corporation duly organized and existing under the laws of the State of Connecticut, and is engaged in the business of marine insurance, with an office for the transaction of business at No. 63 Beaver Street, Borough of Manhattan, City of New York.

244

SIXTH: On or about the 2nd day of July, 1912, the Nord-Deutsche Insurance Company, the Union Insurance Society of Canton, Limited, The Commercial Union Assurance Company, Limited,

245 *Claim.*

the Corporation of Lloyds and the Aetna Insurance Company filed a joint libel against Furness, Withy & Company, Limited, as owner of the Steamship *Pomaron,* in which libel the said several claimants sought to recover certain amounts paid by them to the owners of certain shipments of goods on board the *Alleghany,* which were insured with the several claimants
246 under marine policies against marine perils during the voyage of the *Alleghany* on which she was sunk by collision with the *Pomaron,* owing to the joint fault of the said vessels. The said libel came on to be heard in due course on the pleadings and proofs adduced by the respective parties, together with certain other libels filed by and in behalf of other insurers of goods on board the *Alleghany* and in behalf of the owners
247 of goods thereon. The court held that the *Pomaron* was partly to blame for the collision and ordered a decree in favor of the several libelants against Furness, Withy & Company, Limited, for the losses suffered by them by reason of said collision. The damages of these claimants were agreed on by and with the proctors for Furness, Withy & Company, Limited, and the other parties in interest, as follows:

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Nord-Deutsche Insurance Company, Limited,	$2,304.16
Union Insurance Society of Canton, Limited,	315.74
Commercial Union Assurance Company, Limited	217.64
Corporation of Lloyds	1,331.73
Aetna Insurance Company,	8,979.21
	$13,148.48

249

It was agreed that the said amounts should bear interest from February 2, 1912, and on June 12, 1913, a final decree and judgment was made accordingly, and thereafter entered in the United States District Court, for the Southern District of New York, against Furness, Withy & Company, Limited, wherein and whereby it was provided that the claimants, Nord-Deutsche Insurance Company, Limited, Union Insurance Society of Canton Limited, Commercial Union Assurance Company Limited, the Corporation of Lloyds and Aetna Insurance Company should recover of Furness, Withy & Company, Limited, the sum of $13,148.48, with interest thereon from February 2, 1912, in the sum of $1,051.88, together with $51.70 costs, amounting in all to $14,252.02, with interest thereon until paid.

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SEVENTH: Thereafter, Furness, Withy & Company, Limited, appealed from the said judgment and decree of the United States District Court for the Southern District of New York to the Circuit Court of Appeals for the Second Circuit. Thereafter said appeal duly came on to be heard and the said Court of Appeals rendered an opinion whereby it affirmed the judgment of the District Court, and on or about the 23rd day of June, 1914, the Circuit Court of Appeals entered its decree whereby it was ordered adjudged and decreed that the decree of the District Court be affirmed with interest and costs. Thereafter the mandate of the Circuit Court of Appeals to the District Court was duly filed in and made the judgment of the said District Court, and on October 2, 1914, a decree and judgment on mandate was entered in the United States District Court for the Southern District of New York.

252

253 *Claim.*

EIGHTH: Furness, Withy & Company, Limited, against whom said decrees were entered, and who is the petitioner herein, has not satisfied or paid these decrees in whole or in part, and the decrees aforesaid still remain wholly unsatisfied and unpaid, and under them the total sums therein provided to be paid to these claimants by Fur-
254 ness, Withy & Company, Limited, still remain due and owing to these claimants.

NINTH: The collision for losses due to which these claimants recovered the decree and judgment aforesaid is the collision in respect of which Furness, Withy & Company, Limited, now seeks to limit its liability by the petition in which this claim is filed, and by reason of the said decrees the matters alleged in the petition are *res ad-*
255 *judicata* as between these claimants and Furness, Withy & Company, Limited.

TENTH: By reason of the premises there is now due and owing to these claimants under the said decrees the sum of $14,252.02, with interest from June 12, 1913, until paid.

ELEVENTH: All and singular the premises are true and within the Admiralty and Maritime jur-
256 isdiction of the United States and of this Honorable Court.

WHEREFORE, the said claimants pray that they be allowed by this Honorable Court to make due proof of their claims, amounting to the said sum of $14,252.02, with interest from June 12, 1913, and costs, and that it be ordered, adjudged and decreed:

Claim.

1. That the full amount of the decrees aforesaid with interest as prayed be allowed to these claimants against Furness, Withy & Company, Limited, the petitioner herein.

2. That in the event of its being held that the petitioner is entitled to limit its liability to the value of the Steamship *Pomaron* and her pending freight that these claimants and other judgment creditors, and all parties participating in the decrees aforesaid recover such amounts as may be ratably due to each of them out of the fund in court as the result of these proceedings.

3. That all parties holding decrees or judgments against Furness, Withy & Company, Limited, in respect of the collision set forth in the petition be preferred in any distribution of the said fund which may be made over all parties not having such decrees or judgments.

4. That the court grant to these claimants their costs of these proceedings, and such other or further relief as may be just in the premises.

CONVERS & KIRLIN,
Proctors for Claimants.

SOUTHERN DISTRICT OF NEW YORK, } ss.:
County of New York, }

CHARLES F. WREAKS being duly sworn, says:

That he is a Director of the corporation of Wilcox, Peck & Hughes, and that the said corporation is the agent in New York of the libelants, Union Insurance Society of Canton, Limited; that the foregoing claim is true of his own knowl-

edge, except as to the matters therein alleged on information and belief, and as to those matters he believes it to be true.

The sources of his information and the grounds of his belief as to the matters not within his own knowledge are reports and communications received from the claimants.

The reason that this verification is not made by the claimants is that they are foreign corporations, and the reason that it is not made by any officer of the said corporation is that none of them is at present within the United States.

CHARLES F. WREAKS.

Sworn to before me this 15th day of January, 1915.

L. DEGROVE POTTER,
[SEAL] Notary Public,
Westchester County.

Certificate filed in New York County No. 60.

Claim. 265

DISTRICT COURT OF THE UNITED STATES.

FOR THE SOUTHERN DISTRICT OF NEW YORK

In the Matter
of
The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of its Liability as owner of the steamship "POMARON." } Claim. 266

M. H. Silvera makes claim against the above named Furness, Withy & Company, Limited, petitioner, as owner of the steamship *Pomaron,* as follows: 267

At the time of the collision in the petition herein referred to between the steamships *Pomaron* and *Alleghany* a portion of the cargo in board said steamship *Alleghany* was owned by the present claimant. Thereafter a libel was filed in this court by the present claimant against Furness, Withy & Company, Limited, as owner of the steamship *Pomaron,* and such proceedings were thereupon and thereafter had in said suit that at a Stated Term of the District Court of the United States for the Southern District of New York held on the 2nd day of October, 1914, a final decree on mandate was made in said suit wherein and whereby it was ordered, adjudged and decreed that the libelant, M. H. Silvera, should recover of the respondent, Furness, Withy & 268

269 *Claim.*

Company, Limited, the sum of $1,975.18 with interest thereon from February 2, 1912, in the sum of $158.01, together with $2.40 costs as taxed, amounting in all to the sum of $2,135.59 with interest thereon until paid. This claimant begs to refer to said final decree dated October 2, 1914, and filed in the office of the Clerk of said District Court on October 3, 1914, with the same
270 force and effect as if a certified copy of said decree were annexed to this claim.

Wherefore claimant presents this his claim in this proceeding for the aggregate amount of Two thousand one hundred and thirty-five and 59/100 dollars ($2,135.59) with interest from the 2nd day of October, 1914.

Of said amount the sum of Two and 40/100 dollars ($2.40) with interest from October 2,
271 1914, is, as claimant is informed and believes, payable in full, being costs accrued prior to the institution of the limitation proceeding herein.

Dated, New York, November 17, 1914.

BARRY, WAINWRIGHT, THACHER & SYMMERS,
Proctors for M. H. Silvera.

To:

ALEXANDER GILCHRIST, ESQ.,
272 Commissioner.

To:

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Furness, Withy & Co., Ltd.,
Petitioner.

Claim. 273

CITY, COUNTY AND STATE OF NEW YORK, } ss:
Southern District of New York, }

JAMES K. SYMMERS, being duly sworn, says that he is a member of the firm of Barry, Wainwright, Thacher & Symmers, proctors for claimant M. H. Silvera above named, and that the foregoing claim is true and correct to the best of his knowledge, information and belief. That the 274
sources of his information and the grounds of his belief a[illegible]rticipation in the suit of M. H. Silvera against [illegible]urness, Withy & Company, Limited, mentioned in said claim, as one of the proctors for such libelant, and inspection of the final decree on mandate entered in said suit. That the reason this verification is not made by said M. H. Silvera is that claimant is not now within one hundred miles of New York City, to the knowledge of deponent. 275

JAMES K. SYMMERS.

Sworn to before me, this 17th }
day of November, 1914. }

D. H. MCALPIN PYLE,
[NOTARIAL SEAL] Notary Public,
New York County No. 3012.
New York Register No. 6020.

276

277 *Claim.*

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter 278 of The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of Liability as owner of the steamship "POMARON."	Claim of Laura Moore.

Now appears LAURA MOORE, a resident of the City of New York, and makes claim against the
279 steamship *Pomaron* as follows:

THE NATURE OF THE CLAIMANT'S CLAIM:

Claimant has recovered a judgment against Furness, Withy & Company, Limited, owner of the steamship *Pomaron*, for the sum of $11,040.84, with interest thereon from February 2nd, 1912, in the sum of $883.27, together with $53.30 costs, amounting in all to the sum of $11,977.41, with interest from the 13th day of June, 1913, until
280 paid, in the United States District Court for the Southern District of New York, for damages sustained by the said claimant as a result of loss of goods and merchandise which were on board the steamship *Allegheny* when she was sunk as a result of a collision with the steamship *Pomaron* at a point off the coast of Virginia on February 2nd, 1912, while the said steamship *Allegheny* was proceeding towards ports in the West Indies on a voyage from New York.

Claim.

THE GROUNDS OF THE CLAIMANT'S CLAIM:

The grounds of the claimant's claim are that she has recovered a judgment against the owner of the steamship *Pomaron* in the sum of $11,977.41, with interest from the 13th of June, 1913, until paid, in the United States District Court for the Southern District of New York, and that the said judgment remains unpaid. That the said judgment was recovered for damages sustained by the claimant for loss of goods which were on board the steamship *Allegheny* when she was sunk on February 2nd, 1912, as a result of a collision with the steamship *Pomaron*, as aforesaid.

THE ITEMS OF YOUR CLAIMANT'S CLAIM ARE AS FOLLOWS:

Judgment obtained in the United States District Court for the Southern District of New York for $11,977.41.

Your claimant's claim accrued on the 13th day of June, 1913. No credits are due on the said claim, nor have any payments been made on account thereof.

The said collision was caused and contributed to by the fault and negligence of the steamship *Pomaron* and the steamship *Allegheny*, by reason of which your claimant has sustained damage amounting to the sum of $11,977.41, for which she now makes claim against the steamship *Pomaron*.

Dated, New York, December, 19, 1914.

LAURA MOORE.
Claimant.
HARRINGTON, BINGHAM & ENGLAR,
Proctors for Claimant.

285 *Claim.*

STATE OF NEW YORK,
County of New York, } ss.:

LAURA MOORE, being duly sworn, deposes and says, that she is the claimant herein; that she has read the foregoing claim and knows the contents thereof, and that the same is true to the best of her knowledge, information and belief.

286

LAURA MOORE.

Sworn to before me this 19th
day of December, 1914.

RUSSELL H. PORTER,
[N. S.] Notary Public,
New York County.

287

288

Claim. 289

DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

In the Matter of The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of its Liability as owner of the steamship "POMARON."	Claim.

290

Walter Oloffson, Robert Luacas and C. Lyon Paul, doing business as Oloffson, Luacas & Company, make claim against the above named Furness, Withy & Company, Limited, petitioner, as owner of the steamship *Pomaron,* as follows: 291

At the time of the collision in the petition herein referred to between the steamships *Pomaron* and *Allegheny* a portion of the cargo on board said steamship *Allegheny* was owned by the present claimants. Thereafter a libel was filed in this court by the present claimants against Furness, Withy & Company, Limited, as owner 292 of the steamship *Pomaron,* and such proceedings were thereupon and thereafter had in said suit that at a Stated Term of the District Court of the United States for the Southern District of New York held on the 2nd day of October, 1914, a final decree on mandate was made in said suit wherein and whereby it was ordered, adjudged and decreed that the libelants, Walter Oloffson,

293 *Claim.*

Robert Luacas and C. Lyon Paul, doing business as Oloffson, Luacas & Company, should recover of the respondent, Furness, Withy & Company, Limited, the sum of $1,886.64 with interest thereon from February 2, 1912, in the sum of $150.93, together with $2.40 costs as taxed, amounting in all to the sum of $2,039.97, with interest thereon until paid. These claimants beg to refer to said
294 final decree dated October 2, 1914, and filed in the office of the Clerk of said District Court on October 3, 1914, with the same force and effect as if a certified copy of said decree were annexed to this claim.

WHEREFORE claimants present this their claim in this proceeding for the aggregate amount of Two thousand and thirty-nine and 97/100 dollars ($2,039.97) with interest from the 2nd day of
295 October, 1914.

Of said amount the sum of Two and 40/100 dollars ($2.40) with interest from October 2, 1914, is, as claimants are informed and believe, payable in full, being costs accrued prior to the institution of the limitation proceeding herein.

Dated, New York, November 17, 1914.

BARRY, WAINWRIGHT, THATCHER & SYMMERS,
Proctors for Oloffson, Luacas & Co.

296 To:

ALEXANDER GILCHRIST, Esq.,
Commissioner.

Messrs. BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Furness, Withy & Co., Ltd.,
Petitioner.

Claim. 297

CITY, COUNTY AND STATE OF NEW YORK, } ss.:
Southern District of New York, }

JAMES K. SYMMERS, being duly sworn, says that he is a member of the firm of Barry, Wainwright, Thatcher & Symmers, proctors for claimants Oloffson, Luacas & Company above named, and that the foregoing claim is true and correct to the best of his knowledge, information and belief. 298 That the sources of his information and the grounds of his belief are participation in the suit of Walter Oloffson, *et al.*, against Furness, Withy & Company, Limited, mentioned in said claim, as one of the proctors for such libelants, and inspection of the final decree on mandate entered in said suit. That the reason this verification is not made by one of the said firm of Oloffson, Luacas & Company is that no member of that firm is now within one hundred miles of New York City, to 299 the knowledge of deponent.

JAMES K. SYMMERS.

Sworn to before me this 17th }
day of November, 1914. }

D. H. MCALPIN PYLE,
[NOTARIAL SEAL] Notary Public.
New York County No. 3012.
New York Register No. 6020.

300

75

301 *Claim.*

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter of 302 The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of its Liability as owner of the steamship "POMARON."	Claim of Eugene J. F. Coleman.

Now appears EUGENE J. F. COLEMAN, a resident of the City of New York, and makes claim
303 against the steamship *Pomaron*, as follows:

THE NATURE OF THE CLAIMANT'S CLAIM:

Claimant has recovered a judgment against Furness, Withy & Company, Limited, owner of the steamship *Pomaron*, for the sum of $5,234.23, with interest thereon from February 2nd, 1912, in the sum of $418.74, together with $53.30 costs, amounting in all to the sum of $5,706.27, with interest from the 13th day of June, 1913, until paid,
304 in the United States District Court for the Southern District of New York ,for damages sustained by the said claimant as a result of loss of goods and merchandise which were on board the steamship *Allegheny* when she was sunk as a result of a collision with the steamship *Pomaron* at a point off the cost of Virginia on February 2nd, 1912, while the said steamship *Allegheny* was proceeding towards ports in the West Indies on a voyage from New York.

Your claimant recovered a further judgment in the said court for the sum of $35.00, costs in the Circuit Court of Appeals, with interest thereon from October 6th, 1914, until paid. 305

THE GROUNDS OF THE CLAIMANT'S CLAIM:

The grounds of the claimant's claim are that he has recovered a judgment against the owner of the steamship *Pomaron* in the sum of $5,706.27, with interest thereon from the 13th day of June, 1913, until paid, in the United States District Court for the Southern District of New York, and that the said judgment remains unpaid; and a further judgment in said court for the sum of $35.00, with interest thereon from October 6th, 1914, until paid. That the said judgments were reocvered for damages sustained by the claimant for loss of goods which were on board the steamship *Alleghey* when she was sunk on February 2nd, 1912, as a result of a collision with the steamship *Pomaron,* as aforesaid. 306 307

THE ITEMS OF YOUR CLAIMANT'S CLAIM ARE AS FOLLOWS:

Judgment obtained in the United States District Court for the Southern District of New York on June 13th, 1913, for the sum of $5,706.27, and a further judgment obtained in the United States District Court for the Southern District of New York for the sum of $35.00, with interest from October 6th, 1914. 308

Your claimant's claim accrued as to the first item on the 13th day of June, 1913, and as to the second item on the 6th day of October, 1914. No credits are due on the said claim, nor have any payments been made on account thereof.

309 *Claim.*

The said collision was caused and contributed to by the fault and negligence of the steamship *Pomaron* and the steamship *Allegheny*, by reason of which your claimant has sustained damage amounting to the sum of $5,741.27, for which he now makes claim against the steamship *Pomaron*.

Dated, New York, December 21st, 1914.

310 EUGENE J. F. COLEMAN.
Claimant.

STATE OF NEW YORK, }
County of New York, } ss.:

EUGENE J. F. COLEMAN, being duly sworn, deposes and says, that he is the claimant herein; that he has read the foregoing claim and knows the contents thereof, and that the same is true to
311 the best of his knowledge, information and belief.

EUGENE J. F. COLEMAN.

Sworn to before me this 21st }
day of December, 1914. }

[N. S.] WILLIAM H. HARTZEL, JR.,
Notary Public,
New York County.

312

Claim. 313

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter of The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of Liability as owner of the steamship "POMARON."	Claim of Orton G. Orr. 314

NOW APPEARS Orton G. Orr, a resident of the City of New York, and makes claim against the steamship *Pomaron*, as follows: 315

THE NATURE OF THE CLAIMANT'S CLAIM:

Claimant has recovered a judgment against Furness, Withy & Company, Limited, owner of the steamship *Pomaron*, for the sum of $26,080.65, with interest thereon from February 2nd, 1912, in the sum of $2,086.45, together with $83.75 costs, amounting in all to the sum of $28,250.85, with interest from the 13th day of June, 1913, until paid, in the United States District Court 316 for the Southern District of New York, for damages sustained by the said claimant as a result of loss of goods and merchandise which were on board the steamship *Allegheny* when she was sunk as a result of a collision with the steamship *Pomaron* at a point off the coast of Virginia on February 2nd, 1912, while the said steamship *Allegheny* was proceeding towards ports in the West Indies on a voyage from New York.

317 *Claim.*

THE GROUNDS OF THE CLAIMANT'S CLAIM:

The grounds of the claimant's claim are that he has recovered a judgment against the owner of the steamship *Pomaron* in the sum of $28,-250.85, with interest from the 13th of June, 1913, until paid, in the United States District Court for the Southern District of New York, and that
318 the said judgment remains unpaid. That the said judgment was recovered for damages sustained by the claimant for loss of goods which were on board the steamship *Allegheny* when she was sunk on February 2nd, 1912, as a result of a collision with the steamship *Pomaron*, as aforesaid.

THE ITEMS OF YOUR CLAIMANT'S CLAIM ARE AS FOLLOWS:

319 Judgment obtained in the United States District Court for the Southern District of New York for $28,250.85.

Your claimant's claim accrued on the 13th day of June, 1913. No credits are due on the said claim, nor have any payments been made on account thereof.

The said collision was caused and contributed to by the fault and negligence of the steamship
320 *Pomaron* and the steamship *Alleghany*, by reason of which your claimant has sustained damage amounting to the sum of $28,250.85, for which he now makes claim against the steamship *Pomaron*.

Dated, New York, December 19th, 1914.

ORTON G. ORR,
Claimant.

HARRINGTON, BIGHAM & ENGLAR,
Proctors for Claimant.

Claim. 321

STATE OF NEW YORK,
County of New York, } ss.:

ORTON G. ORR, being duly sworn, deposes and says, that he is the claimant herein; that he has read the foregoing claim and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

ORTON G. ORR. 322

Sworn to before me this 19th day of December, 1914.

RUSSELL H. PORTER,
[NOTARIAL SEAL] Notary Public,
New York County.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK. 323

In the Matter of The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of Liability as owner of the steamship "POMARON."	Claim of Francis W. Van Praag.

324

Now appears Francis W. Van Praag, a resident of the City of New York and makes claim against the steamship *Pomaron,* as follows:

THE NATURE OF THE CLAIMANT'S CLAIM:

Claimant has recovered a judgment against Furness, Withy & Company, Limited, owner of

325 *Claim.*

the steamship *Pomaron,* for the sum of $983.58, with interest thereon from February 2nd, 1912, in the sum of $78.69, together with $53.30 costs, amounting in all to the sum of $1,115.57, with interest from the 13th day of June, 1913, until paid, in the United States District Court for the Southern District of New York, for dam-
326 ages sustained by the said claimant as a result of loss of goods and merchandise which were on board the steamship *Allegheny* when she was sunk as a result of a collision with the steamship *Pomaron* at a point off the coast of Virginia on February 2nd, 1912, while the said steamship *Allegheny* was proceeding towards ports in the West Indies on a voyage from New York.

327 THE GROUNDS OF THE CLAIMANT'S CLAIM:

The grounds of the claimant's claim are that he has recovered a judgment against the owner of the steamship *Pomaron* in the sum of $1,115.57, with interest from the 13th day of June, 1913, until paid, in the United States District Court for the Southern District of New York, and that the said judgment remains unpaid. That the said judgment was recovered for
328 damages sustained by the claimant for loss of goods which were on board the steamship *Allegheny* when she was sunk on February 2nd, 1912, as a result of a collision with the steamship *Pomaron,* as aforesaid.

THE ITEMS OF YOUR CLAIMANT'S CLAIM ARE AS FOLLOWS:

Judgment obtained in the United States District Court for the Southern District of New York for $1,115.57.

Claim.

Your claimant's claim accrued on the 13th day of June, 1913. No credits are due on the said claim, nor have any payments been made on account thereof.

The said collision was caused and contributed to by the fault and negligence of the steamship *Pomaron* and the steamship *Allegheny*, by reason of which your claimant has sustained damage amounting to the sum of $1,115.57, for which he now makes claim against the steamship *Pomaron*.

Dated, New York, December , 1914.

FRANCIS W. VAN PRAAG.
Claimant.

STATE OF NEW YORK,
County of New York, } ss.:

FRANCIS W. VAN PRAAG, being duly sworn, deposes and says, that he is the claimant herein; that he has read the foregoing claim and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

FRANCIS W. VAN PRAAG.

Sworn to before me this 19th day of December, 1914.

RUSSELL H. PORTER,
Notary Public,
New York County.

[NOTARIAL SEAL]

333 *Claim.*

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter of 334 The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of Liability as owner of the steamship "POMARON."	Claim of Marshall K. Weidensaul.

Now appears MARSHALL K. WEIDENSAUL, a resident of the City of New York, and makes claim
335 against the steamship *Pomaron,* as follows:

THE NATUE OF THE CLAIMANT'S CLAIM:

Claimant has recovered a judgment against Furness, Withy & Company, Limited, owner of the steamship *Pomaron,* for the sum of $986.08, with interest thereon from February 2nd, 1912, in the sum of $78.89, together with $53.30 costs, amounting in all to the sum of $1,118.27, with interest from the 13th day of June, 1913, until paid,
336 in the United States District Court for the Southern District of New York, for damages sustained by the said claimant as a result of loss of goods and merchandise which were on board the steamship *Allegheny* when she was sunk as a result of a collision with the steamship *Pomaron* at a point off the cost of Virginia on February 2nd, 1912, while the said steamship *Allegheny* was proceeding towards ports in the West Indies on a voyage from New York.

Claim. 337

THE GROUNDS OF THE CLAIMANT'S CLAIM:

The grounds of the claimant's claim are that he has recovered a judgment against the owner of the steamship *Pomaron* in the sum of $1,118.27, with interest from the 13th of June, 1913, until paid, in the United States District Court for the Southern District of New York, and that the said judgment remains unpaid. That 338 the said judgment was recovered for damages sustained by the claimant for loss of goods which were on board the steamship *Allegheny* when she was sunk on February 2nd, 1912, as a result of a collision with the steamship *Pomaron*, as aforesaid.

THE ITEMS OF YOUR CLAIMANT'S CLAIM ARE AS FOLLOWS:

Judgment obtained in the United States Dis- 339 trict Court for the Southern District of New York for $1,118.27.

Your claimant's claim accrued on the 13th day of June, 1913. No credits are due on the said claim, nor have any payments been made on account thereof.

The said collision was caused and contributed to by the fault and negligence of the steamship *Pomaron* and the steamship *Allegheny*, by reason 340 of which your claimant has sustained damage amounting to the sum of $1,118.27, for which he now makes claim against the steamship *Pomaron*.

Dated, New York, December 21st, 1914.

MARSHALL K. WEIDENSAUL,
Claimant.

341 *Claim.*

STATE OF NEW YORK,
County of New York, } ss.:

MARSHALL K. WEIDENSAUL, being duly sworn, deposes and says, that he is the claimant herein; that he has read the foregoing claim and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

342 MARSHALL K. WEIDENSAUL.

Sworn to before me this 21st day of December, 1914.

RUSSELL H. PORTER,
[N. S.] Notary Public,
New York County.

UNITED STATES DISTRICT COURT,

343 SOUTHERN DISTRICT OF NEW YORK.

In the Matter of The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of Liability as owner 344 of the steamship "POMARON."	Claim of Louis Bertschmann.

Now Appears Louis Bertschmann, a resident of the City of New York, and makes claim against the steamship *Pomaron,* as follows:

THE NATURE OF THE CLAIMANT'S CLAIM:

Claimant has recovered a judgment against Furness, Withy & Company, Limited, owner of

the Steamship *Pomaron,* for the sum of $28,-483.26, with interest thereon from February 2nd, 1912, in the sum of $2,278.66, together with $53.30 costs, amounting in all to the sum of $30,815.22, with interest from the 13th day of June, 1913, until paid, in the United States District Court for the Southern District of New York, for damages sustained by the said claimant as a result of loss of goods and merchandise which were on board the steamship *Allegheny* when she was sunk as a result of a collision with the steamship *Pomaron* at a point off the coast of Virginia on February 2nd, 1912, while the said steamship *Allegheny* was proceeding towards ports in the West Indies on a voyage from New York.

THE GROUNDS OF THE CLAIMANT'S CLAIM:

The grounds of the claimant's claim are that he has recovered a judgment against the owner of the steamship *Pomaron* in the sum of $30,-815.22, with interest from the 13th day of June, 1913, until paid, in the United States District Court for the Southern District of New York, and that the said judgment remains unpaid. That the said judgment was recovered for damages sustained by the claimant for loss of goods which were on board the steamship *Allegheny* when she was sunk on February 2nd, 1912, as a result of a collision with the steamship *Pomaron,* as aforesaid.

THE ITEMS OF YOUR CLAIMANT'S CLAIM ARE AS FOLLOWS:

Judgment obtained in the United States District Court for the Southern District of New York for $30,815.22.

349 *Claim.*

Your claimant's claim accrued on the 13th day of June, 1913. No credits are due on the said claim, nor have any payments been made on account thereof.

The said collision was caused and contributed to by the fault and negligence of the steamship *Pomaron* and the steamship *Allegheny*, by reason of which your claimant has sustained damage
350 amounting to the sum of $30,815.22, for which he now makes claim against the steamship *Pomaron*.

Dated, New York, December —, 1914.

LOUIS BERTSCHMANN,
Claimant.

STATE OF NEW YORK,
County of New York, } ss.:

351 LOUIS BERTSCHMANN, being duly sworn, deposes and says, that he is the claimant herein; that he has read the foregoing claim and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

LOUIS BERTSCHMANN.

Sworn to before me this 22nd day of December, 1914.

352 REINHOLD BUGE, JR.,
[NOTARIAL SEAL] Notary Public,
New York County.

Notary Public, Bronx County.
Certificate No. 118 filed in New York County.
New York Register No. 6236.

Claim. 353

DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

In the Matter of The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of its Liability as owner of the steamship "POMARON."	354 Claim.

Hazan & Company makes claim against the above named Furness, Withy & Company, Limited, petitioner, as owner of the steamship *Pomaron*, as follows: 355

At the time of the collision in the petition herein referred to between the steamships *Pomaron* and *Allegheny* a portion of the cargo in board said steamship *Allegheny* was owned by the present claimant. Thereafter a libel was filed in this court by the present claimant against Furness, Withy & Company, Limited, as owner of the steamship *Pomaron*, and such proceedings were thereupon and thereafter had in said suit that at a Stated Term of the District Court of the United States for the Southern District of New York held on the 2nd day of October, 1914, a final decree on mandate was made in said suit wherein and whereby it was ordered, adjudged and decreed that the libelant, Hazen & Company, should recover of the respondent, Furness, Withy & 356

357 *Claim.*

Company, Limited, the sum of $1,152.73, with interest thereon from February 2, 1912, in the sum of $92.22, together with $2.40 costs as taxed, amounting in all to the sum of $1,247.35, with interest thereon until paid. This claimant begs to refer to said final decree dated October 2, 1914, and filed in the office of the Clerk of the District
358 Court on October 3, 1914, with the same force and effect as if a certified copy of said decree were annexed to this claim.

WHEREFORE claimant presents this its claim in this proceeding for the aggregate amount of One thousand two hundred and forty-seven and 35/100 dollars ($1,247.35) with interest from the 2nd day of October, 1914.

Of said amount the sum of Two and 40/100 dollars ($2.40) with interest from October 2, 1914,
359 is, as claimant is informed and believes, payable in full, being costs accrued prior to the institution of the limitation proceeding herein.

Dated, New York, November 17, 1914.

BARRY, WAINWRIGHT, THACHER & SYMMERS,
Proctors for Hazan & Co.

To:

ALEXANDER GILCHRIST, Esq.,
360 Commissioner.

To:

Messrs. BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Furness, Withy & Co.,, Ltd.,
Petitioner.

Claim. 361

CITY, COUNTY AND STATE OF NEW YORK, } ss.:
Southern District of New York, }

JAMES K. SYMMERS, being duly sworn, says that he is a member of the firm of Barry, Wainwright, Thacher & Symmers, proctors for claimant, Hazan & Company, above named, and that the foregoing claim is true and correct to the best of his knowledge, information and belief. That the 362
sources of his information and the grounds of his belief are participation in the suit of Hazan & Company against Furness, Withy & Company, Limited, mentioned in said claim, as one of the proctors for such libelant, and inspection of the final decree on mandate entered in said suit. That the reason this verification is not made by one of the said firm of Hazan & Company is that no member of that firm is now within one hundred miles of New York City, to the knowledge of de- 363
ponent.

JAMES K. SYMMERS.

Sworn to before me, this 17th }
day of November, 1914. }

D. H. MCALPIN PYLE,
[NOTARIAL SEAL] Notary Public.
New York County No. 3012.
New York Register No. 6020.

364

365 *Claim.*

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter of 366 The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of Liability as owner of the steamship "POMARON."	Claim of Yang-tsze Insurance Association, Ltd., *et al.*

Now comes the Yang-tsze Insurance Association, limited, and Herbert Appleton and Douglas
367 F. Cox, attorneys in fact for the subscribers of the U. S. Lloyds and the Indemnity Mutual Marine Insurance Company, Limited, and present their claims against Furness, Withy & Company, Limited, as follows:

FIRST: The claimant Yang-tsze Insurance Association, Limited, was and it is a corporation organized under the laws of the Colony of Hong Kong and is engaged in the business of marine
368 insurance, with an office for the transaction of business at No. 3 South William Street, in the Borough of Manhattan, City of New York.

SECOND: At all the times hereinafter mentioned, Herbert Appleton and Douglas F. Cox, were and they are attorneys in fact for one hundred individual marine underwriters as subscribers of U. S. Lloyds and were authorized in their behalf to prosecute this suit. U. S. Lloyds

has an office for the transaction of business at No. 3 South William Street, in the Borough of Manhattan, City of New York. 369

THIRD: At the times hereinafter mentioned, the Indemnity Mutual Marine Assurance Company, Limited, was and it is a corporation organized under the laws of the Kingdom of Great Britain and Ireland, and is engaged in the business of marine insurance with an office in New York. 370

FOURTH: On or about the 27th day of February, 1912, the claimants herein named filed a joint libel against Furness, Withy & Company, Ltd., as owner of the Steamship *Pomaron,* in which libel the said several claimants sought to recover certain amounts paid by them to the owners of certain shipments of goods on board the *Alleghany,* which were insured with the several claimants under marine policies against marine perils during the voyage of the *Alleghany* on which she was sunk by collision with the *Pomaron,* owing to the joint fault of the said vessels. The said libel came on to be heard in due course on the pleadings and proofs adduced by the respective parties, together with certain other libels filed by and in behalf of other insurers of goods on board the *Alleghany,* and in behalf of the owners of goods thereon, the court held that the *Pomaron* was partly to blame for the collision and ordered a decree in favor of the several libelants against Furness, Withy & Company, Ltd., for the losses suffered by said libelants by reason of said collision. The damages of these claimants were agreed on by and with the proctors for Furness, Withy & Com- 371 372

pany, Ltd., and the other parties in interest, as follows:

The Yang-tsze Insurance Association, Ltd.,	$9,149.71
United States Lloyds,	7,273.07
Indemnity Mutual Marine Assurance Company, Ltd.,	1,802.21
374	$18,224.99

It was agreed that the said amounts should bear interest from February 2, 1912, and on June 12, 1913, a final decree and judgment was made accordingly, and on June 13, 1913, was entered in the United States District Court, for the Southern District of New York against Furness, Withy & Company, Ltd., wherein and whereby
375 it was provided that the claimants, the Yang-tsze Insurance Association, Ltd., Herbert Appleton and Douglas F. Cox, as attorneys in fact for U. S. Lloyds and the Indemnity Mutual Marine Assurance Company, Ltd., should recover of Furness, Withy & Company, Ltd., the sum of $18,224.99, with interest thereon from February 2, 1912, in the sum of $1,458, together with $54.60 costs as taxed, amounting in all to the sum of $19,737.59, with interest thereon until paid.

376

FIFTH: Thereafter, Furness, Withy & Company, Ltd., appealed from the said judgment and decree of the United States District Court for the Southern District of New York to the Circuit Court of Appeals for the Second Circuit. Thereafter said appeal duly came on to be heard and the said Circuit Court of Appeals rendered an opinion whereby it affirmed the judgment of the

District Court, and on or about the 23rd day of June, 1914, the Circuit Court of Appeals entered its decree whereby it was ordered, adjudged and decreed that the decree of the said District Court be affirmed with interest and costs. Thereafter the mandate of the Circuit Court of Appeals to the said District Court was duly filed in and made a judgment of the said District Court, and on October 2, 1914, a decree and judgment on mandate was entered in the United States District Court for the Southern District of New York, which provided that the Yang-tsze Insurance Association, Limited, *et al.*, recover of Furness, Withy & Company, Ltd., the further sum of $70.91 costs in the Circuit Court of Appeals, and $4 disbursements, with interest thereon until paid.

SIXTH: Furness, Withy & Company, Ltd., against whom said decrees were entered, and who are the petitioners herein, have not satisfied or paid these decrees in whole or in part, and the decrees aforesaid still remain wholly unsatisfied and unpaid, and under them the total sums therein provided to be paid to these claimants by Furness, Withy & Company, Ltd., still remain due and owing to these claimants.

SEVENTH: The collision for losses due to which these claimants recovered the decree and judgment aforesaid is the collision in respect of which Furness, Withy & Company, Ltd., now seeks to limit its liability by the petition in which this claim is filed, and by reason of the said decrees the matters alleged in the petition are *res adjudicata* as between these claimants and Furness, Withy & Company, Ltd.

381 *Claim.*

EIGHTH: By reason of the premises there is now due and owing to these claimants under the said decrees the sum of $19,737.59, with interest from June 12, 1913, until paid, and the sum of $74.91, with interest from October 2, 1914, until paid.

NINTH: All and singular the premises are true
382 and within the Admiralty and Maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, the said claimants pray that they be allowed by this Honorable Court to make due proof of their claims, amounting to the said sum of $19,737.59, with interest from June 12, 1913, and the said sum of $74.91, with interest from October 2, 1914, and costs, and that it be
383 ordered, adjudged and decreed:

1. That the full amount of the decrees aforesaid with interest as prayed be allowed to these claimants against Furness, Withy & Company, Ltd., the petitioner herein.

2. That in the event of its being held that the petitioner is entitled to limit its liability to the value of the Steamship *Pomaron* and her pending
384 freight that these claimants and other judgment creditors, and all parties participating in the decrees aforesaid recover such amounts as may be ratably due to each of them out of the fund in court as the result of these proceedings.

3. That all parties holding decrees or judgments against Furness, Withy & Company, Ltd., in respect of the collision set forth in the petition be preferred in any distribution of the said

fund which may be made over all parties not having such decrees or judgments.

4. That the court grant to these claimants their costs of these proceedings, and such other or further relief as may be just in the premises.

CONVERS & KIRLIN,
Proctors for Claimants.

SOUTHERN DISTRICT OF NEW YORK, }
County of New York, } ss.:

CHARLES F. WREAKS being duly sworn, says:

That he is a Director of the corporation of Willcox, Peck & Hughes, and that the said corporation is the agent in New York of the libelants, Yang-tsze Insurance Association, Ltd.; that the foregoing claim is true of his own knowledge, except as to the matters therein alleged on information and belief, and as to those matters he believes it to be true.

The sources of his information and the grounds of his belief as to the matters not within his own knowledge are reports and communications received from the claimants.

The reason that this verification is not made by the claimants is that they are foreign corporations, and the reason that it is not made by any officer of the said corporation is that none is at present within the United States.

CHARLES F. WREAKS.

Sworn to before me this 15th }
day of January, 1915. }

L. DEGROVE POTTER,
[SEAL] Notary Public,
Westchester County.

Certificate filed in New York County No. 60.

389 *Claim.*

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter
of
390 The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of its Liability as owner of the steamship "POMARON."

The Boston Insurance Company, claimant, presenting its claim against the petitioner above named, alleges as follows:

FIRST: That heretofore it filed a libel in this
391 Court against Furness, Withy & Company, Limited, the petitioner herein, as owner of the steamship *Pomaron,* to recover damages for loss resulting from the collision between the said steamship *Pomaron* and the steamship *Allegheny,* on February 2, 1912; and thereafter, on October 3, 1914, a final decree was entered in said action in favor of the Boston Insurance Company, the claimant herein, as libelant, and against the said Furness, Withy & Company, Limited, the peti-
392 tioner herein, for the sum of $9,768.93, with interest thereon until paid.

SECOND: That the said Boston Insurance Company, claimant, hereby makes and files its claim against the said petitioner for the amount of said decree; namely, the sum of Nine thousand seven hundred sixty-eight and 93/100 Dollars ($9,768.-93), with interest thereon until paid.

Claim.

393

WHEREFORE, The Boston Insurance Company, claimant, prays that the Commissioner appointed to receive claims herein will report that the said sum is due to this claimant and should be allowed to it out of the proceeds of the bond given for the appraised value of the said steamship *Pomaron* herein.

Dated, New York, January 7, 1915.

394

WILLIAMS & STEVENSON,
Proctors for Claimant,
Boston Insurance Company,
Office & P. O. Address,
#27 Cedar Street,
Borough of Manhattan,
New York City.

SOUTHERN DISTRICT OF NEW YORK, ss.:

395

WARD WILLIAMS, being duly sworn, deposes and says, that he is the Vice-President of the Boston Insurance Company, the claimant herein, and the facts set forth in the foregoing claim are true to the best of his knowledge, information and belief.

WARD WILLIAMS.

Sworn to before me, this 12th day of January, 1915.

396

BALTHASAR J. CARUSO,
[SEAL] Notary Public,
Kings Co.

Certificate filed in New York Co.

397 *Claim.*

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

398 of

The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of its Liability as owner of the steamship "POMARON."

The Federal Insurance Company, Sea Insurance Company, Ltd., and London Assurance Cor-
399 poration, make claim against the petitioner Furness, Withy & Company, as follows:

On the 3rd day of December, 1912, these claimants filed in this court a joint libel against the petitioner Furness, Withy & Company, Limited, owner of the Steamship *Pomaron* for the recovery of damages sustained by them by reason of the collision between the Steamship *Pomaron* and the Steamship *Alleghany* alleged and described
400 in the petition in this proceeding and for which damages, and other damages, the petitioner herein prays for a limitation of its liability; and on the 8th day of February, 1913, the petitioner Furness, Withy & Company, Limited, appeared in said action and filed its answer to the said libel of these claimants.

Such proceedings were thereafter had in said action that this court on the 13th day of June,

401

1913, made a final decree in said action, adjudging that these claimants, the Federal Insurance Company, Sea Insurance Company, Ltd., and London Assurance Corporation recover of the respondent therein, the petitioner Furness, Withy & Company, Ltd., damages and interest amounting together to $23,980.99 together with $54.05 costs.

402

Thereafter Furness, Withy & Company, Limited, the petitioner herein, appealed from the aforesaid decree to the United States Circuit Court of Appeals for the Second Circuit, and the said United States Circuit Court of Appeals having heard said appeal, issued its mandate bearing date the 23rd day of June, 1914, affirming the said decree of this court entered on the 13th day of June, 1913, with interests and with costs of said appeal to the appellees these 403
claimants, taxed at $38.50, which mandate was thereafter duly filed in this court.

On the 3rd day of October, 1914, a decree was made by this court, wherein it was ordered, adjudged and decreed that the said mandate of the United States Circuit Court of Appeals for the Second Circuit, be made the judgment of this court, and that these respondents recover against Furness, Withy & Company, Limited, the petitioner herein, the further sum of $38.50 404
costs.

No part of the said decree in favor of these claimants has been paid.

WHEREFORE the Federal Insurance Company, Sea Insurance Company, Ltd., and London Assurance Corporation make claim against the

405 *Claim.*

petitioner herein for the sum of $23,980.99 with interest thereon from June 13, 1913,

KNEELAND, HARISON & HEWITT,
Proctors for Federal Ins. Co.,
Sea Ins. Co., Ltd., and
London Assurance Corporation,
Claimants.

406 Southern District of New York, ss.:

HENDON CHUBB being duly sworn, deposes and says that he is Vice-president of the Federal Insurance Company, and that he is a member of the firm of Chubb & Son, which firm are the agents in the City of New York of the Sea Insurance Company, Ltd., and of the London Assurance Corporation, and that the foregoing claim is in all respects true.

407 HENDON CHUBB.

Sworn to before me this 9th day of January, 1915.

LOUIS H. MAY,
(SEAL) Notary Public,
Kings County.

Certificate filed in New York County.

408

Claim. 409

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of its Liability as owner of the steamship "POMARON." } 58/112. 410

SIRS:

YOU WILL PLEASE TAKE NOTICE, that the within is a copy of a claim filed in the above proceeding on the part of the United States, with Alexander Gilchrist, Jr., Esquire, heretofore appointed Commissioner herein, by order dated the 8th day of October, 1914, in his office in the United States Court and Post Office Building in the City of New York on the 8th day of January, 1915. 411

Dated, New York, January 8th, 1915.

Respectfully,

H. SNOWDEN MARSHALL, 412
United States Attorney,
Proctor for the United States,
Office and Post Office Address,
Room 254 Post Office Building,
Borough of Manhattan,
City of New York.

413 *Claim.*

To:

ALEXANDER GILCHRIST, JR., ESQUIRE,
Commissioner.

Messrs. CONVERS & KIRLIN,
Proctors for Yang-tsze
Insurance Company, Ltd., *et al.*

Messrs. KNEELAND, HARRISON & HEWITT,
414 Proctors for Federal Insurance Company,
et al.

Messrs. BARRY, WAINWRIGHT, THATCHER
and SYMMERS,
Proctors for Walter Oloffson, *et al.*

Messrs. WILLIAMS and STEVENSON,
Proctors for Boston Insurance Co.

Messrs. HARRINGTON, BIGHAM and ENGLAR,
Proctors for Walter D. Despard, *et al.*

415

Messrs. BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Petitioner.
27 William Street.

416

Claim. 417

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

418

The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of its Liability as owner of the steamship "POMARON."

AND now comes the United States of America by its Proctor, H. Snowden Marshall, United States Attorney for the Southern District of New 419
York, and upon information and belief makes claim against the above-named Furness, Withy & Company, Ltd., and the said Steamship *Pomaren* as follows:

THAT heretofore, to wit, on the 13th day of June, 1913, the United States of America recovered a judgment in the sum of four thousand nine hundred and ninety-eight dollars and forty-nine cents ($4,998.49) against the above-named Furness, 420
Withy & Company, Ltd., for damages for loss of mails arising from a collision between the said Steamship *Pomaron* and the Steamship *Allegheny,* as will more fully and at large appear, reference being thereunto had by the records of the Clerk of the District Court of the United States for the Southern District of New York;

THAT no part of the aforesaid judgment has been paid and the full amount thereof is due, to-

gether with interest from the 13th day of June, 1913, to the date of the filing of this claim, amounting to the further sum of four hundred and seventy-one dollars and fifty-one cents ($471.51), making in the aggregate the sum of five thousand four hundred and seventy dollars ($5,470). Wherefore the said United States of America, by its Proctor aforesaid, now presents its claim in the aggregate amount of five thousand four hundred and seventy dollars ($5,470), with lawful interest thereon.

H. SNOWDEN MARSHALL,
United States Attorney,
Proctor for the United States,
Office and Post Office Address,
Room 254 Post Office Building,
Borough of Manhattan,
City of New York.

SOUTHERN DISTRICT OF NEW YORK, }
County of New York, } ss.:

H. SNOWDEN MARSHALL, being duly sworn, deposes and says, that he is the United States Attorney for the Southern District of New York, and Proctor herein for the United States of America; that the foregoing claim is true of his knowledge except as to the matters therein stated to be upon information and belief, and as to those matters he believes it to be true; that the reason why this verification is not made by the claimant is, because it is a Corporation Sovereign, and the sources of deponent's information and belief are the records of his office and statements made to

him by the Assistant United States Attorney in charge of this proceeding.

H. SNOWDEN MARSHALL.

Sworn to before me this day of January, 1915.

FREDERICK L. CAMPBELL,
[SEAL] Notary Public,
Kings County, No. 187.

Certificate filed in New York County.
No. 61, New York County.
Register's No. 5164, New York County.
Register's No. 6178, Kings County.
My commission expires March 30, 1915.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter of The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of Liability as owner of the steamship "POMARON."	Claim of G. Kattan.

Now appears G. Kattan, a resident of the Town of Miragoave, Haiti, and makes claim against the steamship *Pomaron,* as follows:

THE NATURE OF THE CLAIMANT'S CLAIM:

The claimant was the owner of certain goods, consisting of 20 sacks of flour, 1 case of drugs and 1 case care of the Captain of the steamship *Allegheny* which were on board the steamship *Allegheny* when she was sunk as a result of a

collision with the steamship *Pomaron* at a point off the coast of Virginia on February 2nd, 1912, while the said steamship *Allegheny* was proceeding towards ports in the West Indies on a voyage from New York.

THE GROUNDS OF THE CLAIMANT'S CLAIM:

E. Hermann Vivie shipped from New York the merchandise above mentioned, in good order and condition, on board the steamship *Allegheny,* consigned to the claimant at Miragoave, Haiti; all of the said goods being delivered to the steamship *Allegheny* at New York in good order and condition and laden thereon for carriage to the West Indies.

While the said shipment was on board the steamship *Allegheny,* the said steamship *Allegheny,* with the said cargo on board, was sunk on February 2nd, 1912, as a result of a collision with the steamship *Pomaron,* as aforesaid, and with all of her cargo, including that hereinbefore specified, belonging to your claimant, became a total loss.

THE ITEMS OF YOUR CLAIMANT'S CLAIM ARE AS FOLLOWS:

Consignee: G. Kattan, Miragoave, Haiti.

Shipment:

20 sacks of flour		$107.00	
Consul fee		1.00	
Freight, commissions, etc.		24.26	
		$132.26	
1 case care of Captain	$ 6.00		
1 case care of Captain, drugs	23.11	29.11	$161.37

Claim.

Your claimant's claim accrued on February 2nd, 1912. No credits are due on the said claim, nor have any payments been made on account thereof.

The said collision was caused and contributed to by the fault and negligence of the steamship *Pomaron* and the steamship *Allegheny*, by reason of which your claimant, as owner of the cargo aforesaid, has sustained damage amounting to the sum of One hundred and sixty-one and 37/100 ($161.37) Dollars, for which he now makes claim against the steamship *Pomaron*.

Dated, New York, January 14th, 1915.

G. KATTAN,
Claimant.
By Harrington, Bigham & Englar.

STATE OF NEW YORK, }
County of New York, } ss.:

T. CATESBY JONES being duly sworn, deposes and says that he is a member of the firm of Harrington, Bigham & Englar, proctors for the claimant herein; that he has read the foregoing claim and knows the contents thereof and that the same is true to the best of his knowledge, information and belief; that the sources of deponent's information are original documents now in his possession; that the reason this verification is not made by the claimant is that the claimant is not a resident of the United States.

T. CATESBY JONES.

Sworn to before me this 14th day of January, 1915.

WM. H. HARTZELL, JR.,
[NOTARIAL SEAL] Notary Public,
New York County No. 1539.
New York Register No. 6103.

437 *Claim.*

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter 438 of The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of Liability as owner of the steamship "POMARON."	Claim of J. L. de Picciotto, Trading as J. L. de Picciotto & Co.

Now appears J. L. de Picciotto, a resident of the Town of Miragoave, Haiti, and makes claim
439 against the steamship *Pomaron*, as follows:

THE NATURE OF THE CLAIMANT'S CLAIM:

The claimant was the owner of certain goods, consisting of 30 barrels of herrings, 50 packages containing bloaters, 4 full drums codfish, 6 half drums codfish, 4 quarter drums codfish, 4 barrels of mackerel, 20 half barrels of sugar and 20 half cases of soap, which were on the steamship *Allegheny* when she was sunk as a result of a collision
440 with the steamship *Pomaron* at a point off the coast of Virginia on February 2nd, 1912, while the said steamship *Allegheny* was proceeding towards ports in the West Indies on a voyage from New York.

THE GROUNDS OF THE CLAIMANT'S CLAIM:

E. Hermann Vivie shipped from New York the merchandise above mentioned, in good order

and condition, on board the steamship *Allegheny*, consigned to your claimant, at Miragoave, Haiti; all of the said goods being delivered to the steamship *Allegheny* at New York in good order and condition and laden thereon for carriage to the West Indies.

While the said shipment was on board the steamship *Allegheny* the said steamship *Allegheny*, with the said cargo on board, was sunk 442 on February 2nd, 1912, as a result of a collision with the steamship *Pomaron*, as aforesaid, and with all her cargo, including that hereinbefore specified, belonging to your claimant, became a total loss.

THE ITEMS OF YOUR CLAIMANT'S CLAIM ARE AS FOLLOW:

Consignee: J. L. de Picciotto, Miragoave, Haiti. 443
Shipment:

30 bbls. herrings	$240.00	
50 packages bloaters	122.00	
4 drums codfish	132.50	
6/2 drums codfish	100.50	
4/4 drums codfish	34.00	
4 bbls. mackerel	48.00	
20/2 bbls. sugar	122.16	
20/2 cases soap	183.75	444
	982.61	
Consul fee	1.00	
Freight, etc.	133.75	
Commission	27.94	
		$1145.30

Your claimant's claim accrued on February 2nd, 1912. No credits are due on the said claim,

445 *Claim.*

nor have any payments been made on account thereof.

The said collision was caused and contributed to by the fault and negligence of the steamship *Pomaron* and the steamship *Allegheny*, by reason of which your claimant, as owner of the cargo aforesaid, has sustained damage amounting to
446 the sum of Eleven hundred and forty-five and 30/100 ($1145.30) Dollars, for which he now makes claim against the steamship *Pomaron*.

Dated, New York, January 14th, 1915.

J. L. DE PICCIOTTO,
Claimant,
by HARRINGTON, BIGHAM & ENGLAR.

STATE OF NEW YORK, }
447 County of New York, } ss.:

T. CATESBY JONES, being duly sworn, deposes and says that he is a member of the firm of Harrington, Bigham & Englar, proctors for the claimant herein; that he has read the foregoing claim and knows the contents thereof and that the same is true to the best of his knowledge, information and belief; that the sources of deponent's information are original documents now in his possession; that the reason this verification is not
448 made by the claimant is that the claimant is not a resident of the United States.

T. CATESBY JONES.

Sworn to before me this 14th }
day of January, 1915. }

WILLIAM H. HARTZELL, JR.,
[N. S.] Notary Public.
New York County No. 1539.
New York Register No. 6103.

Claim. 449

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter of The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of Liability as owner of the steamship "POMARON."	Claim of Antoine Joseph. 450

NOW APPEARS Antoine Joseph, a resident of the Town of Aux Cayes, Haiti, and makes claim against the steamship *Pomaron,* as follows: 451

THE NATURE OF THE CLAIMANT'S CLAIM:

The claimant was the owner of certain goods, consisting of 1 case of stationery, 3 crates of furniture, 1 safe and 579 bundles of lumber, which were on board the steamship *Allegheny* when she was sunk as a result of a collision with the steamship *Pomaron* at a point off the coast of Virginia on February 2nd, 1912, while the said steamship *Allegheny* was proceeding toward ports in the 452 West Indies on a voyage from New York.

THE GROUNDS OF THE CLAIMANT'S CLAIM:

E. Hermann Vivie shipped from New York the goods merchandise above mentioned in good order and condition, on board the steamship *Allegheny,* consigned to your claimant at Aux Cayes, Haiti; all of the said goods being delivered to the said

453 steamship *Allegheny* at New York in good order and condition and laden thereon for carriage to the West Indies.

While the said shipment was on board the steamship *Allegheny*, the said steamship *Allegheny*, with the said cargo on board, was sunk on February 2nd, 1912, as a result of a collision with the steamship *Pomaron*, as aforesaid, and with 454 all of her cargo, including that hereinbefore specified, belonging to your claimant, became a total loss.

THE ITEMS OF YOUR CLAIMANT'S CLAIM ARE AS FOLLOWS:

Consignee: Antoine Joseph, Aux Cayes, Haiti.

Shipment:

455

1 case stationery	$	23.75
3 crates furniture		79.30
1 safe		75.00
327 bundles p. p. boards		335.17
252 bundles p. p. boards		356.99
		870.21
Freight, commissions, etc.		256.12
		$1,126.33

456

Your claimant's claim accrued on February 2nd, 1912. No credits are due on the said claim, nor have any payments been made on account thereof.

The said collision was caused and contributed to by the fault and negligence of the steamship *Pomaron* and the steamship *Allegheny*, by reason of which your claimant, as owner of the cargo aforesaid, has sustained damage amounting to the

sum of Eleven hundred and twenty-six and 33/100 ($1,126.33) Dollars, for which he now makes claim against the steamship *Pomaron*.

Dated, New York, January 14th, 1915.

ANTOINE JOSEPH,
Claimant,
by
HARRINGTON, BIGHAM & ENGLAR.

STATE OF NEW YORK,
County of New York, } ss.:

T. CATESBY JONES, being duly sworn, deposes and says that he is a member of the firm of Harrington, Bigham and Englar, proctors for the claimant herein; that he has read the foregoing claim and knows the contents thereof and that the same is true to the best of his knowledge, information and belief; that the sources of deponent's information are original documents now in his possession; that the reason this verification is not made by the claimant is that the claimant is not a resident of the United States.

T. CATESBY JONES.

Sworn to before me this 14th day of January, 1915.

WILLIAM H. HARTZELL, JR.,
[N. S.] Notary Public,
New York County, No. 1539.
New York Register No. 6103.

461 *Claim.*

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter 462 of The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of Liability as owner of the steamship "POMARON."	Claim of H. C. Bock.

NOW APPEARS H. C. Bock, a resident of the City of Hamburg, in the Empire of Germany, and
463 makes claim against the steamship *Pomaron,* as follows:

THE NATURE OF THE CLAIMANT'S CLAIM:

The claimant was the owner of certain goods, consisting of twenty bales of cotton goods, which were on board the steamship *Allegheny* when she was sunk as a result of a collision with the steamship *Pomaron* at a point off the coast of
464 Virginia on February 2nd, 1912, while the said steamship *Allegheny* was proceeding toward ports in the West Indies on a voyage from New York.

THE GROUNDS OF THE CLAIMANT'S CLAIM:

Claimant shipped from Hamburg the twenty bales of cotton goods above mentioned, in good order and condition, on board the steamship

"Berlin," to be trans-shipped at the port of New York, consigned to Alzamora, Palacio & Company, at Savanilla, all of the said goods being delivered to the steamship *Allegheny* at New York in like good order and condition as when shipped and laden thereon for carriage to the West Indies. 465

While the said shipment was on board the steamship *Allegheny,* the said steamship *Allegheny,* with the said cargo on board, was sunk on February 2nd, 1912, as a result of a collision with the steamship *Pomaron,* as aforesaid, and with all of her cargo, including that hereinbefore specified, belonging to your claimant, became a total loss. 466

THE ITEMS OF YOUR CLAIMANT'S CLAIM ARE AS FOLLOWS: 467

5 bales of cotton goods invoiced at Marks 1160.80

5 bales of cotton goods invoiced at Marks 1147.75

10 bales of cotton goods invoiced at Marks 2418.45

Marks 4727 rendered at $.238 equal $1125.03

Your claimant's claim accrued on February 2nd, 1912. No credits are due on the said claim, nor have any payments been made on account thereof. 468

The said collision was caused and contributed to by the fault and negligence of the steamship *Pomaron* and the steamship *Allegheny,* by reason of which your claimant, as owner of the cargo aforesaid, has sustained damage amounting to the sum of Eleven hundred and twenty-five and

469 *Claim.*

03/100 ($1125.03) Dollars, for which he now makes claim against the steamship *Pomaron*.

Dated, New York, December 19, 1914.

H. C. Bock,
Claimant,
By D. Roger Englar.

Harrington, Bigham & Englar,
470 Proctors for Claimant.

State of New York,
County of New York, } ss.:

D. Roger Englar, being duly sworn, deposes and says, that he is a member of the firm of Harrington, Bigham & Englar, proctors for the claimant herein; that he has read the foregoing claim and knows the contents thereof, and that
471 the same is true to the best of his knowlwedge, information and belief.

That the reason why this claim is not verified by the claimant is because the claimant is a non-resident and is a resident of Hamburg, Germany. That the sources of deponent's information are original documents which are now in his possession.

D. Roger Englar.

Sworn to before me this 19th
472 day of December, 1914.

Russell H. Porter,
[N. S.] Notary Public,
New York County.

Claim. 473

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter of The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of Liability as owner of the steamship "POMARON."	Claim of Walter D. Despard. 474

NOW APPEARS Walter D. Despard, a resident of the City of New York, and makes claim against the steamship *Pomaron,* as follows:

475

THE NATURE OF THE CLAIMANT'S CLAIM:

Claimant has recovered a judgment against Furness, Withy & Company, Limited, owner of the steamship *Pomaron,* for the sum of $13,683.09, with interest thereon from February 2nd, 1912, in the sum of $1094.85, together with $53.30 costs, amounting in all to the sum of $14,831.24, with interest from the 13th day of June, 1913, until paid, in the United States District Court for the Southern District of New York, for damages sustained by the said claimant as a result of loss of goods and merchandise which were on board the steamship *Allegheny* when she was sunk as a result of a collision with the steamship *Pomaron* at a point off the coast of Virginia on February 2nd, 1912, while the said steamship *Allegheny* was proceeding towards ports in the West Indies on a voyage from New York.

476

477 *Claim.*

THE GROUNDS OF THE CLAIMANT'S CLAIM:

The grounds of the claimant's claim are that he has recovered a judgment against the owner of the steamship *Pomaron* in the sum of $14,831.24, with interest from June 13th, 1913, until paid, in the United States District Court for the Southern District of New York, and that the
478 said judgment remains unpaid. That the said judgment was recovered for damages sustained by the claimant for loss of goods which were on board the steamship *Allegheny* when she was sunk on February 2nd, 1912, as a result of a collision with the steamship *Pomaron*, as aforesaid.

THE ITEMS OF YOUR CLAIMANT'S CLAIM ARE AS FOLLOWS:

479 Judgment obtained in the United States District Court for the Southern District of New York for $14,831.24.

Your claimant's claim accrued on the 13th day of June, 1913. No credits are due on the said claim, nor have any payments been made on account thereof.

The said collision was caused and contributed to by the fault and negligence of the steamship
480 *Pomaron* and the steamship *Allegheny*, by reason of which your claimant has sustained damage amounting to the sum of $14,831.24, for which he now makes claim against the steamship *Pomaron*.

Dated New York, December 19, 1914.

WALTER D. DESPARD,
Claimant.

HARRINGTON, BIGHAM & ENGLAR,
Proctors for Claimant.

481

STATE OF NEW YORK,
County of New York, } ss.:

WALTER D. DESPARD, being duly sworn, deposes and says, that he is the claimant herein; that he has read the foregoing claim and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

WALTER D. DESPARD.

482

Sworn to before me this 19th day of December, 1914.

RUSSELL H. PORTER,
[NOTARIAL SEAL] Notary Public,
New York County.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

483

In the Matter of The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of Liability as owner of the steamship "POMARON."	Claim of Roberts, Dutton & Company.

484

NOW APPEAR Henry Roberts, M. Fontaine, Adolf Strohm and M. Martineau, co-partners trading as Roberts, Dutton & Company, with an office and place of business at Aux Cayes, Haiti, and make claim against the steamship *Pomaron,* as follows:

THE NATURE OF THE CLAIMANT'S CLAIM:

Claimants were the owners of certain goods, consisting of 216 packages of merchandise, 198

485 packages of merchandise, 1 box pumps, 4 packages of merchandise, 10 casks hardware and 1 drum codfish, which were on board the steamship *Allegheny* when she was sunk as a result of a collision with the steamship *Pomaron* at a point off the coast of Virginia on February 2nd, 1912, while the said steamship *Allegheny* was proceeding toward ports in the West Indies on a voyage
486 from New York.

THE GROUNDS OF THE CLAIMANT'S CLAIM:

The Seaboard Trading Company shipped from New York the 216 packages of merchandise above mentioned, in good order and condition, on board the steamship *Allegheny,* consigned to your claimants at Aux Cayes, Haiti; all of the said goods being delivered to the steamship *Allegheny* at
487 New York in good order and condition and laden thereon for carriage to the West Indies.

A. Behrens & Company, shipped from New York 198 packages of merchandise, and 1 box pumps, in good order and condition, on board the steamship *Allegheny,* consigned to your claimants at Aux Cayes, Haiti; all of the said goods being delivered to the steamship *Allegheny* at New York, in good order and condition, and laden thereon for
488 carriage to the West Indies.

Huttlinger & Struller shipped from New York 4 packages of merchandise, in good order and condition, on board the steamship *Allegheny,* consigned to your claimants at Aux Cayes, Haiti; all of the said goods being delivered to the steamship *Allegheny* in good order and condition and laden thereon for carriage to the West Indies.

Vital & Valthe shipped from Liverpool 10 casks of hardware, in good order and condition, on

board the steamship *Cedric,* to be transhipped at the port of New York, consigned to your claimants at Aux Cayes, Haiti; all of the said goods being delivered to the steamship *Allegheny* at New York, in like good order and condition as when shipped and laden thereon for carriage to the West Indies. 489

There was also shipped from New York 1 drum of codfish on board the steamship *Allegheny,* in good order and condition, consigned to your claimants at Aux Cayes, Haiti; the said drum of codfish being delivered to the steamship *Allegheny* at New York, in good order and condition, and laden thereon for carriage to the West Indies. 490

While the said shipments were on board the steamship *Allegheny,* the said steamship *Allegheny,* with the said cargo on board, was sunk on February 2nd, 1912, as a result of a collision with the steamship *Pomaron,* as aforesaid, and with all of her cargo, including that hereinbefore specified, belonging to your claimants, became a total loss. 491

THE ITEMS OF YOUR CLAIMANTS' CLAIM ARE AS FOLLOWS:

Consignees: Roberts, Dutton & Company, Aux Cayes, Haiti.

Shipper: Seaboard Trading Company.

Shipment: 492

150	packages bloaters	$360.00
30	bbls. herrings	240.00
1	drum codfish	33.05
10	half drums codfish	167.00
20	quarter drums codfish	170.00
5	bbls. mackerel	60.00
	Strappings	6.00
	Freight	139.85
		$1,175.90

493 *Claim.*

Consignees: Roberts, Dutton & Company,
Aux Cayes, Haiti.
Shipper: A. Behrens & Company.

Shipment:

66	bundles lumber	$80.08
60	pieces lumber	37.35
494 70	pieces lumber	34.98
1	box raw locks	2.27
1	box pump parts	15.03
	Freight, Consul's fees, etc.	47.79
	Commission	5.43
		222.93

Consignees: Roberts, Dutton & Company,
495 Aux Cayes, Haiti.
Shipper: A. Behrens & Company.

Shipment:

1 box pumps 8.50

Consignees: Roberts, Dutton & Company,
Aux Cayes, Haiti.
496 Shipper: Huttlinger & Struller.

Shipment:

1	case roller composition	$20.25
2	bales paper	19.96
1	crate chairs	4.25
	Freight, etc	4.48
	Commission	1.22
		50.16

Claim.

497

Consignees: Roberts, Dutton & Company,
Aux Cayes, Haiti.
Shipper: Vital & Valthe.

Shipment:

10 casks hardware 157.20

498

Consignees: Roberts, Dutton & Company,
Aux Cayes, Haiti.

Shipment:

1 drum codfish 44.03

Total $1,658.72

499

Your claimants' claim accrued on February 2nd, 1912. No credits are due on the said claim, nor have any payments been made on account thereof.

The said collision was caused and contributed to by the fault and negligence of the steamship *Pomaron* and the steamship *Allegheny,* by reason of which your claimants, as owners of the cargo aforesaid, have sustained damage amounting to the sum of Sixteen hundred and fifty-eight and 72/100 ($1,658.72) Dollars, for which they now make claim against the steamship *Pomaron.*

500

Dated, New York, December 19th, 1914.

ROBERTS, DUTTON & COMPANY,
Claimants,

By
D. ROGER ENGLAR.
HARRINGTON, BIGHAM & ENGLAR,
Proctors for Claimant.

501 *Claim.*

STATE OF NEW YORK,
County of New York, } ss.:

D. ROGER ENGLAR, being duly sworn, deposes and says, that he is a member of the firm of Harrington, Bigham & Englar, proctors for the claimants herein; that he has read the foregoing claim and knows the contents thereof, and that the same
502 is true to the best of his knowledge, information and belief.

That the reason why this claim is not verified by the claimants is because the claimants are non-residents of this district. That the sources of deponent's information are original documents which are now in his possession.

D. ROGER ENGLAR.

Sworn to before me this 19th
503 day of December, 1914.

RUSSELL H. PORTER,
[SEAL] Notary Public,
New York County

504

Claim. 505

DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of 506

The libel and petition of FURNESS, WITHY & COMPANY, Limited, owner of the steamship "POMARON" in a cause of limitation of liability.

The Atlantic Mutual Insurance Company makes claim against the above named petitioner, Furness, Withy & Company, Limited, and the said Steamship *Pomaron* and alleges: 507

I.—The Atlantic Mutual Insurance Company is a corporation organized under the laws of the State of New York, engaged in the business of marine insurance, and has its office at No. 49-51 Wall Street in the City of New York.

II.—At the time of the collision between the Steamship *Pomaron* and the Steamship *Alleghany* on the 2d day of February, 1912, alleged in the libel and petition herein, the cargo on board said Steamship *Alleghany* included the cargo hereinafter particularly described, all of which was totally lost by reason of said collision, to wit: 508

(1) De Lima Cortissoz & Co. shipped 200 cases kerosense and 12 cases lard, marked V. F. B. Aux-Cayes, consigned to Mrs. B. F. Birmingham

509 *Claim.*

at Aux-Cayes, of the value, including freight and other charges prepaid, of $462.50;

47 packages of merchandise, marked B. L. H. Cartagena, consigned to B. Lopez B & Hijo at Cartagena, of the value, including freight and other charges prepaid, of $407.45;

13 packages of merchandise, marked Lequerica,
510 Cartagena, consigned to Lequerica Hermanos at Cartagena, of the value, including freight and other charges prepaid, of $601.38.

6 packages of merchandise, marked R. & C. B., Cartagena, consigned to R. & C. Benediti J at Cartagena, of the value, including freight and other charges prepaid, of $227.05;

8 bales cotton prints, marked Traad, Pto Colombia, consigned to Traad Hermanos at Puerto Colombia, of the value, including freight and other
511 charges prepaid, of $917.15;

4 packages Hydraulic Press, marked L. G. P. Pto. Colombia, consigned to B. de la Torre & Co. at Puerto Colombia, of the value, including freight and other charges prepaid, of $308.12;

2 boxes candle machinery and 1 Bale Asbestos Packing, marked J. M. & C. Pto. Colombia, consigned to J. de Medina & Co. at Puerto Colombia, of the value, including freight and charges pre-
paid, of $966.89;

512 10 bbs. glassware and 10 tins matches, marked M. A. R., Pto. Colombia, consigned to Mario A. Roncallo, at Puerto Colombia, of the value, including freight and charges prepaid, of $154.27;

2000 bags wheat, box sawpoints, and 1 marble table top marked Urueto & Salzedo, Barranquille, and consigned to Urueto Salzedo & Co. at Puerto Colombia, of the value, including freight and other charges prepaid, of $5,915.36.

513

(2) Lanman & Kemp shipped 7 packages merchandise marked H. de P. R. & Co., Medellin, Cartagena, consigned to Pedro Macia & Co. at Cartagena, of the value, including freight and charges prepaid, of $235.90;

42 packages merchandise, marked O. M. A. Honda, Savanilla, consigned to Almazora, Palacio & Co. at Savanilla, of the value, including freight and other charges prepaid, of $914.20;

514

18 packages merchandise, marked M. S. & M., Savanilla, consigned to Castellano & Co. at Savanilla, of the value, including freight and other charges prepaid, of $563.10;

62 packages merchandise, marked I. M. S., Savanilla, consigned to Isaac M. Salas, at Savanilla, of the value, including freight and other charges prepaid of $1,208.70;

21 packages merchandise, marked V. H. Barranquilla, consigned to Vengoechea Hermanos at Savanilla, of the value, including freight and other charges prepaid, of $427.10;

515

11 packages merchandise, marked D L O Carta-
M
gena, consigned to Pineda, Lopez & Co., at Cartagena, of the value, including freight and other charges prepaid, of $302.80.

(3) The Seaboard Trading Company shipped 82 packages of fish marked H R & C Miragoane,

516

S T C

consigned to Herrmann, Reinbold & Co. at Miragoane, Hayti, of the value, including freight and other charges prepaid, of $532.57;

35 packages of fish, marked Gousse, Miragoane, consigned to T. Gousse at Miragoane, of the value, including freight and other charges prepaid, of $162.75;

517 *Claim.*

30 packages of Fish, marked S. P. & C. P au P., S. T. C. consigned to S. Polynice & Co. at Port au Prince, of the value, including freight and other charges prepaid, of $87.47;

160 packages of Fish and 7 bundles paper bags, marked C M P au P., consigned to Cleonard STC
518 Michel at Port au Prince, of the value, including freight and other charges prepaid of $800.27.

(4) G. Ph. Nieder shipped 7 cases lard, marked CD Aux Cayes, consigned to Ch. Dennery, at Aux N Cayes, of the value, including freight and other charges prepaid, of $71.19;

43 packages merchandise, marked L M & C N
519 P au P., consigned to L. Mevs & Co. Port au Prince, of the value, including freight and other charges prepaid, of $211.92.

(5) Barclay & Co. shipped 29 cases advertising matter, marked L N Bogota, Cartagena, consigned to Bustamente Hermanos, at Cartagena, of the value of $465.75.

520 (6) W. & A. Leaman shipped 37 packages merchandise, marked P. N. Petit Goave, consigned to P. Nicolas, at Petit Goave, of the value, including freight and other charges prepaid, of $324.39.

(7) Marcus Mason & Company shipped 64 packages bridge iron, marked Gobierno de Cundinamarco, Colombia, Barranquilla, consigned to Collector of Customs of Puerto Colombia, of the

521

value, including freight and charges prepaid, of $397.11.

(8) P. Mangual shipped 7 packages merchandise, marked G V Jeremie, consigned to G. Vigoureux at Jerennie of the value, including freight and charges prepaid, of $62.45.

522

(9) Swift & Co. shipped 2 cases cottonseed oil marked I L Port au Prince, consigned to its own order at Port au Prince, notify Isaac Leger, of the value, including freight and charges prepaid, of $17.16.

The aggregate value of above described shipments is Sixteen thousand seven hundred and forty-five dollars ($16,745.00).

523

III.—All of the cargo hereinabove described was fully insured by the several owners thereof under marine policies issued by this claimant, against marine perils during the voyage of said Steamship *Allegheny* and upon the loss thereof this claimant became liable to pay and has paid to the respective owners of said cargo, indemnity for the loss thereof; and the amounts so paid by this claimant, equal or exceed in the case of each of said shipments the values hereinbefore set forth, and the aggregate sum of $16,745.00. This claimant thereby succeeded by right of subrogation to the rights and remedies of the several owners of the above described cargo for the loss thereof and is entitled to make claim for and to recover the same.

524

525 *Claim.*

WHEREFORE the Atlantic Mutual Insurance Company makes claim upon the petitioner herein and upon said Steamship *Pomaron* for the sum of Sixteen thousand seven hundred and forty-five dollars ($16,745.00) with interest from February 2, 1912.

ATLANTIC MUTUAL INS. CO.,

526 Kneland Harrison & Hazen, by CORNELIUS ELDERT,
Vice-President.
Proctors for Claimant.

Southern District of New York, ss.:

CORNELLIUS ELDERT, being duly sworn, deposes and says that he is Vice-President of the claimant, the Atlantic Mutual Insurance Company, and that the foregoing claim is true to the best of his knowledge and belief.

CORNELIUS ELDERT.

527 Sworn to before me this 12th day of January, 1915.

WILLIAM D. WINTER,
[SEAL] Notary Public, Kings County.
Certificate filed in New York County.
Commission expires March 30, 1916, No. 14 .

528

Claim. 529

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK

In the Matter of The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of Liability as owner of the steamship "POMARON."	Claim of M. Dahens. 530

Now appears M. DAHENS, a resident of Port-au-Prince, and makes claim against the steamship *Pomaron* as follows:

531

THE NATURE OF THE CLAIMANT'S CLAIM:

The claimant was the owner of certain goods, consisting of 77 packages of merchandise, as hereinafter set forth, which were on board the steamship *Alleghany* when she was sunk as a result of a collision with the steamship *Pomaron* at a point off the coast of Virginia on February 2nd., 1912, which the said steamship *Alleghany* was proceeding towards ports in the West Indies 532 on a voyage from New York.

THE GROUNDS OF THE CLAIMANT'S CLAIM:

J. de Porry shipped from New York the goods above mentioned, in good order and condition, on board the steamship *Alleghany*, consigned to M. Dahens, at Port-au-Prince, Haiti, all of the said goods being delivered to the said steamship *Alle-*

533 *ghany* at New York in good order and condition and laden thereon for carriage to the port aforesaid.

While the said goods were on board the steamship *Alleghany,* the said steamship *Alleghany,* with the said cargo on board, was sunk on February 2nd, 1912, as a result of a collision with the
534 steamship *Pomaron,* as aforesaid, and with all of her cargo, including that hereinbefore specified, belonging to your claimant, became a total loss.

THE ITEMS OF YOUR CLAIMANT'S CLAIM ARE AS FOLLOWS:

Consignee: M. Dahens, Port-au-Prince, Haiti.

Shipment:

535

60 bags flour 2 cases cheese, 5 boxes soap, 5 bags shots, 1 bag oats, 1 case brushes, etc. 2 cases toys, 1 crate chairs,	$522.74

536 Your claimant's claim accrued on February 2nd, 1912. No credits are due on the said claim, nor have any payments been made on account thereof.

The said collision was caused and contributed to by the fault and negligence of the steamship *Pomaron* and the steamship *Allegheny,* by reason of which your claimant, as owner of the cargo aforesaid, has sustained damage amounting to the sum of Five hundred and twenty-two and 74/100

Claim. 537

($522.74) Dollars, for which he now makes claim against the steamship *Pomaron.*

Dated, New York, January 16, 1915.

M. DAHENS,
Claimant,
By Harrington, Bigham & Englar.

STATE OF NEW YORK, } ss.: 538
County of New York, }

T. CATESBY JONES, being duly sworn, deposes and says, that he is a member of the firm of Harrington, Bigham & Englar, proctors for the claimant herein; that he has read the foregoing claim and knows the contents thereof and that the same is true to the best of his knowlwedge, information and belief; that the sources of deponent's information are original documents now in his possession; that the reason this verification is not made by the claimant is that the claimant is not a resident of the United States. 539

T. CATESBY JONES.

Sworn to before me this 18th }
day of January, 1915. }

A. V. LYNCH, JR.,
Notary Public,
New York County.

540

541 *Claim.*

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter of 542 The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of Liability as owner of the steamship "POMARON."	Claim of H. Borday.

Now appears H. Borday, a resident of Port-au-Prince, and makes claim against the steamship *Pomaron*, as follows:

543

THE NATURE OF THE CLAIMANT'S CLAIM.

The claimant was the owner of certain goods, consisting of 20 packages of merchandise, as hereinafter set forth, which were on board the steamship *Allegheny* when she was sunk as a result of a collision with the steamship *Pomaron* at a point off the coast of Virginia on February 2nd, 1912, while the said steamship
544 *Allegheny* was proceeding toward ports in the West Indies on a voyage from New York.

THE GROUNDS OF THE CLAIMANT'S CLAIM.

J. de Porry shipped from New York the goods above mentioned, in good order and condition, on board the steamship *Allegheny*, consigned to H. Borday, at Port-au-Prince, Haiti, all of the

said goods being delivered to the said steamship *Allegheny* at New York in good order and condition and laden thereon for carriage to the ports aforesaid. 545

While the said goods were on board the steamship *Allegheny,* the said steamship *Allegheny,* with the said cargo on board, was sunk on February 2nd, 1912, as a result of a collision with the steamship *Pomaron,* as aforesaid, and with all of her cargo, including that hereinbefore specified, belonging to your claimant, became a total loss. 546

THE ITEMS OF YOUR CLAIMANT'S CLAIM ARE AS FOLLOWS:

Consignee: H. Borday, Port-au-Prince, Haiti.

Shipment. 547

3 cases glassware,
2 crates jardinieres,
8 cases glassware, ...$198.69
4 barrels glassware,
2 cases pails,
1 coffee mill,

Your claimant's claim accrued on February 2nd, 1912. No credits are due on the said claim, nor have any payments been made on account thereof. 548

The said collision was caused and contributed to by the fault and negligence of the steamship *Pomaron* and the steamship *Allegheny,* by reason of which your claimant, as owner of the cargo aforesaid, has sustained damage amounting to the sum of One hundred and ninety-eight

549 *Claim.*

and 69/100 ($198.69) Dollars, for which he now makes claim against the steamship *Pomaron.*

Dated, New York, January 16, 1915.

H. BORDAY,
Claimant,
by HARRINGTON, BINGHAM & ENGLAR.

550 STATE OF NEW YORK,
County of New York, } ss.:

T. CATESBY JONES, being duly sworn, deposes and says, that he is a member of the firm of Harrington, Bigham & Englar, proctors for the claimant herein; that he has read the foregoing claim and knows the contents thereof and that the same is true to the best of his knowledge, information and belief; that the sources of de-
551 ponent's information are original documents now in his possession; that the reason this verification is not made by the claimant is that the claimant is not a resident of the United States.

T. CATESBY JONES.

Sworn to before me this 18th day of January, 1915.

A. V. LYNCH, JR.,
Notary Public,
552 New York County.

Claim. 553

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter of The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of Liability as owner of the steamship "POMARON."	Claim of A. Gagny. 554

NOW APPEARS A. Gagny, a resident of Port-au-Prince, and makes claim against the steamship *Pomaron,* as follows:

555

THE NATURE OF THE CLAIMANT'S CLAIM:

The claimant was the owner of certain goods, consisting of 2 cases of cotton goods, as hereinafter set forth, which were on board the steamship *Allegheny* when she was sunk as a result of a collision with the steamship *Pomaron* at a point off the coast of Virginia on February 2nd, 1912, while the said steamship *Allegheny* was proceeding towards ports in the West Indies on 556 a voyage from New York.

THE GROUNDS OF THE CLAIMANT'S CLAIM:

J. de Porry shipped from New York the goods above mentioned, in good order and condition, on board the steamship *Allegheny,* consigned to A. Gagny, at Port-au-Prince, Haiti, all of the said goods being delivered to the said steamship *Alle-*

557 *Claim.*

gheny at New York in good order and condition and laden thereon for carriage to the port aforesaid.

While the said goods were on board the steamship *Allegheny,* the said steamship *Allegheny,* with the said cargo on board, was sunk on February 2nd, 1912, as a result of a collision with the steamship *Pomaron,* as aforesaid, and with
558 all of her cargo, including that hereinbefore specified, belonging to your claimant, became a total loss.

THE ITEMS OF YOUR CLAIMANT'S CLAIM ARE AS FOLLOWS:

Consignee: A. Gagny, Port-au-Prince, Haiti.

Shipment:

2 cases cotton goods $266.94
559

Your claimant's claim accrued on February 2nd, 1912. No credits are due on the said claim, nor have any payments been made on account thereof.

The said collision was caused and contributed to by the fault and negligence of the steamship *Pomaron* and the steamship *Allegheny,* by reason of which your claimant, as owner of the cargo aforesaid, has sustained damage amount-
560 ing to the sum of Two hundred and sixty-six and 94/100 ($266.94) Dollars, for which he now makes claim against the steamship *Pomaron.*

Dated, New York, January 16, 1915.

A. GAGNY,
Claimant,
by HARRINGTON, BIGHAM & ENGLAR.

Claim.

561

STATE OF NEW YORK, }
County of New York, } ss.:

T. CATESBY JONES, being duly sworn, deposes and says, that he is a member of the firm of Harrington, Bigham & Englar, proctors for the claimant herein; that he has read the foregoing claim and knows the contents thereof and that the same is true to the best of his knowledge, information and belief; that the sources of deponent's information are original documents now in his possession; that the reason this verification is not made by the claimant is that the claimant is not a resident of the United States.

562

T. CATESBY JONES.

Sworn to before me this 18th }
day of January, 1915. }

A. V. LYNCH, JR.,
Notary Public,
New York County.

563

[Endorsement:]—District Court of the United States for the Southern District of New York—In the Matter of the Libel and Petition of Furness, Withy & Company, Limited, as owners of the Steamship *Pomaron* for limitation of liability.—Commissioner's Report.—Filed Jan. 18, 1915.

564

565 *Objection to Claims.*

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter of 566 The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of its Liability as owner of the steamship "POMARON."	Notice of Objection to Claims.

SIRS:

PLEASE TAKE NOTICE, that Yang-tsze Insurance Association, Limited, U. S. Lloyds, Indemnity Mutual Marine Insurance Company, Limited,
567 Nord-Deutsche Insurance Company, Union Insurance Society of Canton, Limited, Commercial Union Assurance Company, Limited, the Corporation of Lloyds and the Aetna Insurance Company having filed claims with the commissioner in the above-entitled proceeding, hereby object and except to the allowance of the claims heretofore filed with the commissioner in this proceeding as follows:

1. G. Kattan for the sum of $161.37 for the al-
568 leged loss of or damage to goods.

2. J. L. di Picciotto, trading as J. L. di Picciotto & Company for the sum of $1,145.30 for the alleged loss of or damage to goods.

3. Antonine Joseph for the sum of $1,126.33 for the alleged loss of or damage to goods.

4. H. C. Bock for the sum of $1,125.03 for the alleged loss of or damage to goods.

569

5. Henry Roberts, M. Fontaine, Adolf Strohm and M. Martineau, copartners, trading as Robert Dutton & Company, for the sum of $1,658.72 for the alleged loss of or damage to goods.

6. Atlantic Mutual Insurance Company for the sum of $16,745.00 for the alleged loss of or damage to goods insured by it.

570

7. M. Dahens for the sum of $522.74 for the alleged loss of or damage to goods.

8. H. Borday for the sum of $198.69 for the alleged loss of or damage to goods.

9. A. Gagny for the sum of $266.94 for the alleged loss of or damage to goods; as they are not sufficiently proved on the following grounds:

571

FIRST: The averments on behalf of the claimants do not disclose any cause of action warranting the relief prayed for.

SECOND: The averments on behalf of the claimants do not disclose the existence of any claim, or lien, upon which a judgment in these proceedings can be founded.

THIRD: The claims are not sufficiently established, verified or authenticated.

572

FOURTH: The averments on behalf of the claimants are vague, uncertain, indefinite and insufficient.

FIFTH: The fund will be insufficient to pay all creditors and the claims of the Yang-tsze Insurance Association, Limited, U. S. Lloyds, Indemnity Mutual Marine Insurance Company, Limited, Nord-Deutsche Insurance Company, Union Insurance Society of Canton, Limited, Commercial Union Assurance Company, Limited, the Corpor-

ation of Lloyds and the Aetna Insurance Company having been reduced to judgments are prior in law to the aforesaid claims.

SIXTH: And in other particulars which will be shown upon the trial of, or hearing on, said claims.

WHEREFORE, the said claimants, whose claims have been reduced to judgments, pray that the claims above mentioned be adjudged to be insufficient and imperfect and that the said claims be disallowed and excluded from this proceeding.

Yours, &c.,
CONVERS & KIRLIN,
Proctors for Claimants,
Yang-tsze Ins. Assoc. Ltd., *et al.*

To:

ALEXANDER GILCHRIST, Jr., Esq.,
Clerk.

HARRINGTON, BIGHAM & ENGLAR, Esqrs.,
Proctors for Claimants, G. Kattan, J. L. di Picciotto, A. Joseph, H. C. Bock, Robert Dutton & Company, M. Dahens, H. Borday and A. Gagny.

KNEELAND, HARISON & HEWITT, Esqrs.,
Proctors for Atlantic Mutual Ins. Co.

[Endorsed:]—United States District Court, Southern District of New York—In the Matter of The Petition of Furness, Withy & Co., Ltd., for Limitation of its Liability, as Owner of the Steamship *Pomaron*—Notice of Objection to Claim—Convers & Kirlin, Proctors for Claimants, 27 William Street, New York, N. Y.—Copy Received Jan. 22, 1915, Kneeland, Harison & Hewitt—Copy Recieved Jan. 22, 1915, Harrington, Bigham & Englar, 64 Wall St., New York—Filed Jan. 22, 1915.

Order.

At a Stated Term of the United States District Court, for the Southern District of New York, held in the Post Office Building, Borough of Manhattan, City of New York, on the 25th day of January, 1915.

Present—AUGUSTUS N. HAND,
United States District Judge.

In the Matter

of

The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of its Liability as owner of the steamship "POMARON."

On the underwritten consent and on motion of Convers & Kirlin, proctors for the claimants, Yang-tsze Insurance Association, Limited, U. S. Lloyds, Indemnity Mutual Marine Insurance Company, Limited, Nord-Deutsche Insurance Company, Union Insurance Society of Canton, Limited, Commercial Union Assurance Company, Limited, the Corporation of Lloyds and the Aetna Insurance Company, it is hereby

ORDERED that the exceptions of the claimant's Yang-tsze Insurance Association, Limited, U. S. Lloyds, Indemnity Mutual Marine Insurance Company, Limited, Nord-Deutsche Insurance Company, Union Insurance Society of Canton, Limited, Commercial Union Assurance Company,

581 *Order.*

Limited, the Corporation of Lloyds and the Aetna Insurance Company to the provisional valuation of the steamship *Pomaron* at $70,419.14 be filed *nunc pro tunc* as of the 23rd day of January, 1915, and the time to serve the aforesaid exceptions to the valuation of the steamship *Pomaron* be extended to and including the 26th
582 day of January, 1915.

AUGUSTUS N. HAND,
U. S. D. J.

We consent to the entry of the foregoing order.

BURLINGHAM [illegible]IERY & BEECHER,
[illegible]ors for Petitioner.

[Endorsed:]— [illegible] States District Court,
583 Southern [illegible]rict of New York—In the matter of the petition of Furness, Withy & Co., Ltd., for limitation of its liability, as owner of the Steamship *Pomaron*—Order—Convers & Kirlin, Proctors for Claimants, 27 William Street, New York, N. Y.—Filed, Jan. 26, 1915.

584

Exception to Valuation. 585

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter
of
The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of Liability as owners of the steamship "POMARON." 586

The Yangtse Insurance Association, Ltd., United States Lloyds, Indemnity Mutual Marine Insurance Company, Ltd., Nord-deutsche Insurance Company, Union Insurance Society of Canton, Ltd., Commercial Union Assurance Company, Ltd., The Corporation of Lloyds, and the Aetna Insurance Company, Claimants herein except to the previous valuation of the Steamship *Pomaron* and her pending freight, at $70,419.14 in the order of this Court entered herein on October 8, 1914, and to the amount of the stipulation for value filed by the petitioners herein. 587

CONVERS & KIRLIN,
Proctors for Claimants Yangtse Insurance Assoc., Ltd., United States Lloyds, Indemnity Mut. Mar. Ins. Co., Ltd., Nord-deutsche Ins. Co., Union Ins. Soc. of Canton, Ltd., The Corporation of Lloyds, Etna Insurance Co. 588

To

ALEXANDER GILCHRIST, JR., ESQ., Clerk,
BURLINGHAM, MONTGOMERY & BEECHER, ESQS.,
Proctors for petitioner.

[Endorsed:]—Filed Jan. 26, 1915.

589

Answer.

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

In the Matter

590 of

The Petition of FURNESS, WITHY & COMPANY, LIMITED, owner of the Steamship "POMARON," in a cause of limitation of liability, civil and maritime.

EUGENE J. F. COLEMAN, one of the persons who
591 has filed a claim in this proceeding, answering the said petition, alleges as follows:

FIRST: Claimant has duly appeared in this cause and filed a claim against the steamship *Allegheny* in the sum of $5741.27, the amount due him under two decrees of this Court, the first of which was entered in this Court on the 1st day of June, 1912, and the second of which was entered in this Court on October 6th, 1914.

592 SECOND: Claimant admits that the petitioner is a British corporation and that the petitioner was the owner of the steamship *Pomaron*. Claimant denies the other allegations contained in Article First of the petition.

THIRD: Claimant denies the allegations contained in Articles Second and Third of the petition, except in so far as they are found to be facts

593

by this Court and the Circuit Court of Appeals for the Second Circuit in the case of Eugene J. F. Coleman against Furness, Withy & Company, Limited.

FOURTH: Claimant denies that said collision was due solely to the fault of the steamship *Allegheny,* and alleges that the said collision was the result of the fault of both the steamship *Pomaron* 594
and the steamship *Allegheny.*

FIFTH: Claimant admits the allegations contained in Article Fifth of the petition.

SIXTH: Claimant has no knowledge or information sufficient to form a belief as to the allegations contained in Article Sixth of the petition.

SEVENTH: Claimant admits the allegations contained in Article Seventh of the petition. 595

EIGHTH: Claimant has no knowledge or information sufficient to form a belief as to the allegations contained in Article Eighth of the petition.

NINTH: Claimant admits the admiralty and maritime jurisdiction of the United States and of this Honorable Court, but denies that all and singular the premises of the petition are true, as alleged in Article Ninth thereof.

596

TENTH: Further answering the said petition, claimant alleges that an action was instituted by him in this Court against Furness, Withy & Company, Limited, the petitioner herein, as owner of the steamship *Pomaron,* for the sum of $5234.23, with interest thereon, for damage sustained by this claimant as a result of the collision mentioned in the petition. The said cause came on for trial before the United States District Court for the

597 Southern District of New York and an opinion was handed down holding that the steamship *Pomaron* was at fault for the collision. Thereafter and on or about the 13th day of June, 1913, a final decree was entered in the said cause, wherein your claimant was awarded a judgment against Furness, Withy & Company, Limited, in the sum
598 of $5234.23, with interest thereon from February 2, 1912, in the sum of $418.74, together with $53.30 costs, amounting in all to the sum of $5706.27. An appeal was taken from the said decree by Furness, Withy & Company, Limited, to the United States Circuit Court of Appeals for the Second Circuit, and an opinion was handed down in the said Court affirming the decree entered in the United States District Court for the Southern District of New York. A mandate of the said
599 United States Circuit Court of Appeals for the Second Circuit was duly issued, directing that the said decree of the United States District Court for the Southern District of New York be affirmed and that your claimant be awarded costs to the extent of $35.00 in the Circuit Court of Appeals. A further decree was thereupon entered in the United States District Court for the Southern District of New York on or about October 6th, 1914, wherein your claimant was awarded a fur-
600 ther judgment in the sum of $35.00 against the said petitioner. Your claimant, therefore, alleges that the matters and things set forth in the petition herein, in so far as the said petitioner seeks to relieve itself from liability for the damage sustained as a result of the said collision, is *res adjudicata,* and that the only issue which can now be considered by this Court is the issue of whether or not the said petitioner is entitled to limit its liability.

601

WHEREFORE, your claimant prays that the said petition be dismissed in so far as the petitioner prays that the Court adjudge that the said petitioner is not liable to any extent for any loss, damage or injury nor for any claim whatsoever in any way arising out of, or in consequence of the collision aforesaid.

HARRINGTON, BIGHAM & ENGLAR,
Proctors for Claimant, 602
64 Wall Street,
New York City.

STATE OF NEW YORK, }
County of New York, } ss.:

EUGENE J. F. COLEMAN, being duly sworn, deposes and says, that he is the claimant herein; that he has read the foregoing answer and knows the contents thereof, and that the same is true to 603
the best of his knowledge, information and belief.

EUGENE J. F. COLEMAN.

Sworn to before me this 30th }
day of January, 1915. }

WILLIAM H. HARTZELL, JR.,
[N. S.] Notary Public,
New York County.

[Endorsed:] — United States District Court, Southern District of New York.—In the Mat- 604
ter of the Petition of Furness, Withy & Company, Limited, owner of the Steamship *Pomaron*, in a cause of limitation of liability, civil and maritime.—Answer of Eugene J. F. Coleman.—Harrington, Bigham & Englar, Proctors for Claimant, 64 Wall Street, New York City.—Copy received Jan. 30, 1915, Burlingham, Montgomery & Beecher.—Filed Jan. 30, 1915.

605 *Answer.*

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

In the Matter

606 of

The Petition of FURNESS, WITHY & COMPANY, LIMITED, owner of the Steamship "POMARON," in a cause of limitation of liability, civil and maritime.

ANTOINE JOSEPH, one of the persons who has 607 filed a claim in this proceeding, answering the said petition, alleges as follows:

FIRST: Your claimant alleges that he has duly filed a claim in this proceeding as owner of certain cargo which was laden on board the steamship *Allegheny* at the time she sank as a result of a collision with the steamship *Pomaron,* which occurred on February 2nd, 1912, in the sum of $1126.33.

608 SECOND: Claimant admits that the petitioner is a British corporation and that the petitioner was the owner of the steamship *Pomaron.* Claimant denies the other allegations contained in Article First of the petition.

THIRD: Claimant denies the allegations contained in Article Second of the petition, except in so far as they are expressly admitted in Article Eleventh hereof.

Answer.

609

FOURTH: Claimant denies the allegations contained in Article Third of the petition, except in so far as they are expressly admitted in Article Eleventh hereof.

FIFTH: Claimant denies that the said collision was not caused or contributed to by the fault of the steamship *Pomaron,* and alleges that the said collision was caused by the fault of both the 610 steamship *Pomaron* and the steamship *Allegheny.*

SIXTH: Claimant admits the allegations contained in Article Fifth of the petition.

SEVENTH: Claimant has no knowledge or information sufficient to form a belief as to the allegations contained in Article Sixth of the petition. 611

EIGHTH: Claimant admits the allegations contained in Article Seventh of the petition.

NINTH: Claimant has no knowledge or information sufficient to form a belief as to the allegations contained in Article Eighth of the petition.

TENTH: Claimant admits the admiralty and 612 maritime jurisdiction of the United States and of this Honorable Court, but denies that all and singular the premises of the petition are true, as alleged in Article Ninth thereof.

ELEVENTH: FURTHER ANSWERING the said petition, claimant alleges that on or about the 1st day of February, 1912, the German steamship *Allegheny,* with a general cargo on board, in-

613 cluding a quantity of cargo owned by your claimant, the details of which have been set forth in a claim filed in this proceeding by your claimant, left New York, bound for various ports in the West Indies. While proceeding on her voyage, and at about 11 A. M. on the morning of February 2nd, 1912, the *Allegheny* was run into by the British steamer *Pomaron* at a point about 90
614 miles east of Cape Henry, Virginia, as a result of which the *Allegheny* was sunk, and with her cargo, including that owned by your claimant, became a total loss. Upon information and belief, your claimant alleges that prior to the collision the *Allegheny* was proceeding on a course of south 4° west, magnetic, and the *Pomaron*—which had left Hampton Roads bound for European ports—was standing on a course of east
615 by north ¼ north, magnetic. The weather was clear, and both vessels were proceeding at full speed—the *Allegheny* making about 12 or 13 knots per hour—the *Pomaron* about 9 knots per hour. When the *Allegheny* and the *Pomaron* were first called upon to navigate with reference to each other, they were on crossing courses—the *Allegheny* having the *Pomaron* on her own starboard hand. At this time the navigating officer of the *Allegheny* was in the chart room,
616 working up his position from observations taken shortly before. There was no officer on the bridge, and no sufficient lookout was being maintained. On the other hand, the chief officer of the *Pomaron* was in charge of the navigation of his vessel, and first made out the *Allegheny* several miles away at a bearing given in the log book of the *Pomaron* as northeast. The *Allegheny* and the *Pomaron* continued to approach

each other until they were about a mile apart, at which time the officer in charge of the *Pomaron* observed that the *Allegheny* was continuing on her southerly course proceeding at a speed of between 12 and 13 knots per hour, with no one on her bridge. In that situation the *Pomaron* blew a signal of one whistle and ported her helm, and although her whistle remained unanswered, and 618
although it was apparent that the *Allegheny* was keeping her course and speed, the *Pomaron* continued on at her full speed of about 9 knots and under her port helm, until the distance between the steamers was reduced from one mile to half a mile. At this point the *Allegheny* blew a signal of two whistles, indicating that her helm was being starboarded and that she would continue ahead and across the bows of the *Pomaron.* Thereupon the engines of the *Pomaron* were re- 619
versed at full speed and her helm put hard-a-port and kept hard-a-port until the stem of the *Pomaron* came into collision with the starboard side of the *Allegheny* at a point abaft the engine room, doing such damage to the *Allegheny* that she shortly afterwards filled and sank, and with her cargo, became a total loss.

TWELFTH: The said collision and consequent damage were not caused or contributed to by any 620
fault or negligence on the part of your claimant, but were caused by the fault and negligence of both the steamship *Allegheny* and the steamship *Pomaron.* The steamship *Allegheny* was at fault in the particulars as pointed out in the petition herein, and the *Pomaron* was at fault in the following particulars:

1. In that a good lookout was not maintained.

621 *Answer.*

2. In that she failed to keep her course as well as her speed as required by the starboard-hand-rule.

3. In that, while she and the *Allegheny* were approaching each other on crossing courses, and when they were a mile apart, she negligently blew a signal of one whistle
622 and ported her helm in a reckless attempt to cross the bows of the *Allegheny*.

4. In thereafter continuing at full speed under a port helm until the distance between the vessels was decreased from one mile to a half a mile while her one whistle signal remained unanswered, and while it was obvious that the *Allegheny* was continuing ahead without change of course or speed, with no
623 one on her navigating bridge.

5. In failing seasonably to stop and reverse in order to avoid a collision.

6. In putting her helm to port instead of to starboard after the *Allegheny* blew her a signal of two whistles when the vessels were half a mile apart.

WHEREFORE, your claimant prays that the said
624 petition be dismissed in so far as the petitioner prays that the Court adjudge that the said petitioner is not liable to any extent for any loss, damage or injury nor for any claim whatsoever in any way arising out of, or in consequence of the collision aforesaid.

HARRINGTON, BIGHAM & ENGLAR,
Proctors for Claimant,
64 Wall Street,
New York City.

Answer.

STATE OF NEW YORK, }
County of New York, } ss.:

T. CATESBY JONES, being duly sworn, deposes and says that he is a member of the firm of Harrington, Bigham & Englar, proctors for the claimant herein; that he has read the foregoing answer and knows the contents thereof and that the same is true to the best of his knowledge, information and belief. That the sources of deponent's information are original documents now in his possession. That the reason this verification is not made by the claimant is that the claimant is not a resident of the United States.

T. CATESBY JONES.

Sworn to before me this 30th }
day of January, 1915. }

WILLIAM H. HARTZELL, JR.,
Notary Public,
New York County.

[Endorsed:]—United States District Court, Southern District of New York—In the Matter of the Petition of Furness, Withy & Company, Limited, owner of the Steamship *Pomaron*, in a cause of limitation of liability, civil and maritime—Answer of Antonie Joseph—Harrington, Bigham & Englar, Prictors for Claimant, 64 Wall Street, New York City—Copy received, Jan. 30, 1915, Burlingham, Montgomery & Beecher.

Filed Jan. 30. 1915

629 *Order.*

At a Stated Term of the United States District Court for the Southern District of New York, held in the Post Office Building, in the Borough of Manhattan, City of New York, on the 1 day of February, 1915.

630 Present—Hon. JULIUS M. MAYER,
U. S. D. J.

In the Matter
of
The Petition of FURNESS, WITHY & COMPANY, Limited, for Limi-
631 tation of its Liability as owner of the steamship "POMARON."

Order Extending Claimants' Time to Answer.

On the underwritten consent and on motion of Convers & Kirlin, proctors for the Yang-tsze Insurance Association, Limited, *et al.*, it is hereby

ORDERED that the time of the claimants, Yangtsze Insurance Association, Limited, U. S. Lloyds,
632 Indemnity Mutual Marine Insurance Company, Limited, Nord-Deutsche Insurance Company, Union Insurance Society of Canton, Limited, Commercial Union Assurance Company, Limited, the Corporation of Lloyds and the Aetna Insurance Company, to answer the petition herein, be and it hereby is extended to and including the 10th day of February, 1915.

J. M. MAYER,
U. S. D. J.

Note of Issue. 633

We consent to the entry of the foregoing order,
Burlingham Montgomery & Beecher
Proctors for Petitioner.

[Endorsed:]—United States District Court, Southern District of New York—In the Matter of The Petitioner of Furness, Withy & Company, Ltd., for Limitation of its Liability as Owner of the Steamship *Pomaron*.— 634
Order Extending Claimants' Time to Answer—Convers & Kirlin, Proctors for Claimants, 27 William Street, New York, N. Y.—Filed Feb. 2, 1915.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

635

In the Matter of The Petition of FURNESS, WITHY & COMPANY, LTD., Owner of the Steamship "POMARON" for limitation of liability.	58/112.

636

Motion to open default.

ARTHUR B. CHURCH, Esq., for the motion.
H. SNOWDEN MARSHALL, Esq., opposed.

Returnable April 16, 1915, 10 A. M.

[Endorsed:]—Filed April 15, 1915.

637 *Notice of Motion.*

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

638 The Petition of FURNESS, WITHY & COMPANY, LTD., owners of the Steamship "POMARON," for limitation of liability.

Sir:

PLEASE TAKE NOTICE that upon the annexed consents and upon the annexed affidavit of
639 Arthur B. Church, verified the 15th day of April 1915, a motion will be made before the United States District Court for the Southern District of New York at a Term thereof to be held at the Post Office Building, on the 16th day of April 1915, at ten o'clock A. M. or as soon thereafter as counsel can be heard for the annexed proposed order.

Dated, New York, April 15, 1916.

640 Yours, etc.,

ARTHUR B. CHURCH,
Proctor for Claimant,
Office and Post Office Address,
27 Cedar Street,
Borough of Manhattan,
City of New York.

To:

H. SNOWDEN MARSHALL, ESQ.,
U. S. District Attorney.

Affidavit. 641

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

642 The Petition of FURNESS, WITHY & COMPANY, LTD., owners of the Steamship "POMARON," for limitation of liability.

STATE OF NEW YORK,
County of New York, } ss.:

SOUTHERN DISTRICT OF NEW YORK:

643 Arthur B. Church, being duly sworn, deposes and says: I am proctor for Gerhard Arlt, the claimant herein. Said Arlt is in default for not filing a certain claim against the proceeds of the Steamship *Pomeron* within the time allowed by the monition herein. All of the proctors for all the claimants herein, with the exception of H. Snowden Marshall, United States District Attorney, have consented that the said default be opened and the said Arlt permitted to file a claim against the proceeds of the Steamship Pomaron in the sum of Two thousand ($2,000) Dollars. 644

WHEREFORE, deponent prays that the annexed proposed order be made.

ARTHUR B. CHURCH.

Sworn to before me, this
15th day of April, 1915.

JOHN K. DUBYEE,
Notary Public No. 173, New York County,
Registers No. 7105.

Seal.

645 *Consent.*

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The Petition of FURNESS, WITHY & 646 COMPANY, LTD., owners of the Steamship "POMARON," for limitation of liability.

We, the undersigned, proctors for all of the claimants herein, hereby consent that the default of Gerhard Arlt, for failure to file claim herein on behalf of himself and the members of the crew of the Steamship *Alleghany*, be opened, and that the said Gerhard Arlt be permitted to file a 647 claim against the proceeds of the Steamship *Pomaron* in the sum of Two thousand ($2000) Dollars, and that the same be referred to the Commissioner herein, and that an order to the above effect may be entered without further notice.

Dated New York, April 8, 1915.

HARRINGTON, BIGHAM & ENGLAR,
Proctors for Coleman, *et al.*

648 KNEELAND, HARRISON & HEWITT,
Proctors for Fed. Ins. Co., *et al.*

BARRY, WAINWRIGHT, THACHER & SYMMERS,
Proctors for Oloffson, *et al.*

WARD D. WILLIAMS,
Proctor for Boston Ins. Co.

CONVERS & KIRLIN,
Proctors for Nord-deutsche Ins. Co., Yangtse Ins. Co., *et al.*

BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Petitioner.

Order. 649

At a Stated Term of the United States District Court held in and for the Southern District of New York on the 16th day of April, 1915.

Present—Hon. LEARNED HAND,
Judge.

650

In the Matter

of

The Petition of FURNESS, WITHY & COMPANY, LTD., owners of the Steamship "POMARON," for limitation of liability.

651

Upon the annexed consents under date of April 8, 1915, and upon the annexed affidavit of Arthur B. Church, Esq., verified the 15th day of April, 1915, together with notice of motion thereupon, it is on motion of Arthur B. Church, Proctor for Gerhard Arlt.

ORDERED that the default of Gerhard Arlt for failure to file claim herein against the proceeds of the Steamship *Pomaron* on behalf of himself and members of the crew of the Steamship *Alleghany*, be vacated and that said Gerhard Arlt be permitted to file such claim within one day from date hereof and that the same be referred to the Commissioner herein, Hon. Alexander Gilchrist. 652

LEARNED HAND,
U. S. D. J.

[Endorsed:]—Filed April 17, 1915.

653 *Commissioner's Additional Report.*

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

654 The libel and petition of FURNESS, WITHY & COMPANY, LTD., as owners of the steamship "POMARON" for limitation of liability.

To the United States District Court for the Southern District of New York:

I, Alex. Gilchrist, Jr., the Commissioner named
655 in the order of this court made and entered in this proceeding on the 8th day of October, 1914, before whom the claims of all persons for any loss, damage or injury occasioned by or resulting from the collision set forth in the libel and petition herein were required to be presented on or before the 18th day of January, 1915, do respectfully report that the following additional claim has been presented to me:

656 That of Gerhard Alt, personally and in behalf of the officers and crew of the steamship *Alleghany* for loss of personal effects amounting to $2,000.

That the said claim is hereto annexed and made a part of this report; all of which is respectfully submitted.

New York, April 22, 1915.

ALEX. GILCHRIST, JR.,
Commissioner.

Claim. 657

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter
of
The Petition of FURNESS, WITHY & COMPANY, LTD., Owner of the Steamship "POMARON," for Limitation of Liability. 658

And now comes Gerhard Arlt, personally, and in behalf of the officers and crew of the Steamship *Alleghany,* and makes claim in the above matter against Furness, Withy & Company, Ltd., and the 659
proceeds of the Steamship *Pomaron* as follows:

FIRST: The claimant resides at 448 Avon Avenue, in the City of Newark and State of New Jersey, and at the time of the collision hereinafter mentioned was a member of the crew of the Steamship *Alleghany,* and was serving as chief engineer aboard said vessel. That at all the times hereinafter mentioned said Steamship *Alleghany* was owned by the Hamburg-American 660
Line, and the said Steamship *Pomaron* was owned by Furness, Withy & Company, Ltd., the petitioner herein.

SECOND: On the 2nd day of February, 1912, at about 11:15 o'clock in the forenoon, the said Steamship *Alleghany,* while on a voyage from

661 *Claim.*

New York to various ports in the West India Islands, came in collision with the Steamship *Pomaron* at a point in the Atlantic Ocean about 37° 32′ north latitude and 74° west longitude, and as a result of said collision the steamship *Alleghany* sank and was totally lost, together with the personal clothing and effects of her officers and crew.

662

THIRD: By reason of said sinking and the loss of his personal clothing and effects, the claimant and the various members of the crew who have assigned their claims to the claimant herein, sustained damages in the sum of Two thousand ($2,000) Dollars, for which amount claimant herein makes claim against Furness, Withy & Company, Ltd., the petitioner herein, and the proceeds of the said Steamship *Pomaron.*

663

FOURTH: The claimant and the other members and officers of the crew of the Steamship *Alleghany* have not been paid for said loss or any part thereof, and no credits against said claims or any of them exist in favor of Furness, Withy & Company, Ltd., the petitioner herein and the owner of the said Steamship *Pomaron.*

664

FIFTH: By reason of the premises there is now due the claimant from the said petitioner and the proceeds of the said Steamship *Pomaron* the total sum of Two thousand ($2,000) Dollars.

WHEREFORE the claimant presents this claim and prays that this Honorable Court will decree that

Claim. 665

he recover from the petitioner herein and against the proceeds of the Steamship *Pomaron,* the damages aforesaid; and that he have such other and further relief as may be just.

ARTHUR B. CHURCH,
Proctor for Claimant,
Office and Post Office Address,
27 Cedar Street, 666
Borough of Manhattan, City of New York.

To:

ALEXANDER GILCHRIST, ESQ.,
Commissioner,

BURLINGHAM, MONTGOMERY & BEECHER, ESQS.,
Proctors for Petitioner.

667

668

669 *Claim.*

STATE OF NEW YORK, }
County of New York } ss.:
Southern District of New York, }

ARTHUR B. CHURCH, being duly sworn, deposes and says: I am the proctor for the claimant herein. I have read the foregoing claim and know the contents thereof and the same is true
670 on information and belief. The reason this verification is made by me and not by the claimant is that the latter is not now within the County of New York where I have my office.

ARTHUR B. CHURCH.

Sworn to before me, this }
8th day of April, 1915. }

JOHN S. DURYEE,
[SEAL] Notary Public No. 173,
671 New York County.

Registers No. 7105.
Commission expires March 30, 1917.

[Endorsed:]—United States District Court, Southern District of New York.—In the Matter of the Petition of Furness, Withy & Company, Ltd., etc.—Claim, Gerhard Arlt and Crew S. S. *Alleghany*—Arthur B. Church,
672 Proctor for Claimant, 27 Cedar Street, Boro. Manhattan, New York City.

[Endorsed:] — United States District Court, Southern District of New York.—In the Matter of the Libel and Petition of Furness, Withy & Company, Limited, as owner of the Steamship *Pomaron* for limitation of liability.—Report on Additional Claim.—Filed April 22, 1915.

Petitioner's Bill of Costs. 673

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The libel and petition of FURNESS, WITHY & COMPANY, Limited, owner of the steamship "POMARON" for limitation of liability. 674

PETITIONER'S BILL OF COSTS AS PROVIDED FOR UNDER FINAL DECREE.

DISBURSEMENTS. 675

Commissioner's fee for receiving claims.	$50.00
Advertising monition in Evening Mail..	80.64
Marshal's fees.....	2.12
Notary's fees.....	3.00
Premium on stipulation for costs.....	2.50
Clerk's fees heretofore taxed (in part)	2.10
	$140.36
Clerk's final fees on entering decree and disbursing fund	944.89
	$1,085.25

676

Taxed April 22, 1915.

ALEXANDER GILCHRIST, Jr.,
Clerk.

677 *Petitioner's Bill of Costs.*

STATE OF NEW YORK, }
County of New York, } ss.:

CHAUNCEY I. CLARK, being duly sworn, says that he is an attorney in the office of Burlingham, Montgomery & Beecher, the proctors for the petitioner herein, and has had charge of the above proceeding in behalf of the petitioner; that the
678 above disbursements have been necessary in the limitation proceedings, and the above amounts have been paid as above set forth.

CHAUNCEY I. CLARK,

Sworn to before me, this 22d day of April, 1915.

ADELINE K. SCHNEIDER,
[SEAL] Notary Public No. 3436,
New York County.

679 Register's No. 6209.
Commission expires March 30, 1916.

[Endorsed:]—District Court of the United States, Southern District of New York—In the Matter of the Libel and Petition of Furness, Withy & Co., Ltd., owner of the S. S. *Pomaron*, for Limitation of Liability—Petitioner's Bill of Costs under Final Decree—Burlingham, Montgomery & Beecher, Proc-
680 tors for Petitioner, 27 William Street, Borough of Manhattan, New York City.

Notice of taxation of the within bill of costs hereby waived.

CONVERS & KIRLIN.

Notice. 681

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

682

The libel and petition of FURNESS, WITHY & COMPANY, Limited, owner of the steamship "POMARON" in a cause of limitation of liability.

SIRS:

TAKE NOTICE that the within final decree will be presented for settlement at the office of the Clerk 683 of this Court at his offices in the Post Office Building, Borough of Manhattan, City of New York, on the 22nd day of April, 1915, at 10 o'clock A. M.

Dated, New York, April 21, 1915.

Yours, etc.,

BURLINGHAM, MONTGOMERY & BEECHER,

Proctors for Petitioner.

To: 684

MESSRS. CONVERS & KIRLIN,

Proctors for certain cargo claims.

685 *Final Decree.*

At a Stated Term of the District Court of the United States for the Southern District of New York, held in the Court Rooms thereof in the Borough of Manhattan, City of New York, on the 22nd day of April, 1915.

686 Present—Hon. Learned Hand, District Judge.

In the Matter of The libel and petition of FURNESS, WITHY & COMPANY, Limited, 687 owner of the steamship "POMARON" for limitation of liability	Final Decree.

WHEREAS a petition was filed in this Court on October 5, 1914, by Furness, Withy & Company, Limited, alleging that it was at that time and at the time of the collision hereinafter mentioned a British corporation and was at said time sole owner of the steamship *Pomaron;* that the *Pom-*
688 *aron* while on a voyage from Baltimore, bound for Leith, laden with grain and general cargo, collided on the high seas with the steamship *Alleghany* of the Hamburg American Line at about 11:15 A. M. February 2, 1912, in about 37° 32′ N. latitude and 74° W. longitude; that the steamship *Alleghany* sank as a result of said collision and her cargo, personal effects of the crew and everything connected with the vessel became a total

loss; that the claimants made against the petitioner for damages alleged to have been caused by or to have resulted from the collision in the sum of upwards of $200,000; that by reason of the collision the voyage of the *Pomaron* was broken up and abandoned, and she returned to Newport News, Va., for repairs; that the freight earned by the *Pomaron* on said voyage amounted to the sum 690
of $6,029.37; that the value of the *Pomaron* at the termination of said voyage, after the collision with the *Alleghany* amounted to the sum of $64,389.77; that the *Pomaron* was damaged to the extent of $15,610.23; and that the petitioner claimed exoneration of liability for said collision, or, in the alternative, claimed the benefit of the limitation of liability provided in sections 4283, 4284 and 4285 of the Revised Statutes of the United States and of the various statutes amend- 691
atory thereof and supplemental thereto, and that to that end the petitioner was willing to give a stipulation with sureties for the payment into Court of the amount or value of its interest in the steamship *Pomaron* in whatever sum should be ordered, as provided by the aforesaid statutes and by the rules of practice of the Supreme Court of the United States and of this Court in matters of admiralty cognizance; and the said petition having set forth the facts and circum- 692
stances by reason of which exemption from liability was claimed and prayed that the Court would cause a due appraisement to be made of the amount or value of the petitioner's interest in said steamship *Pomaron* and would make an order for the giving of a stipulation with surety for the payment thereof into Court of the amount of petitioner's said interest whenever the Court

should so order, and cause a monition to be issued to all persons claiming damages for any loss, damage or injury caused or resulting from the collision aforesaid, citing them to appear before a Commissioner to be named by the Court and make due proof of their respective claims, and also to appear and answer the allegations of the petition; and having further prayed that the
694 Court on the filing of such a stipulation as may be determined to be proper, would issue its injunction restraining the commencement, continuation or prosecution thereafter of any suit, action or legal proceeding of any nature whatever against the petitioner or the steamship *Pomaron* in respect of any claim or claims arising out of the aforesaid accident, except in the present proceeding instituted as above, and that the Court
695 would adjudge that the petitioner is not liable to any extent for any loss, damage or injury nor for any claim whatsoever in any way arising out of or in consequence of the collision above described, or that, if liable, its liability be limited to the amount or value of its interest in the steamship *Pomaron* at the end of the voyage on which she was engaged at the time of said accident and her pending freight, and that the moneys paid or secured to be paid as aforesaid, be
696 divided *pro rata* among such claimants as may duly prove their claims before the Commissioner to be appointed herein saving to any parties any priority to which they may be entitled; and

WHEREAS certain affidavits were made and filed as to the value of the petitioner's interest in the said steamship *Pomaron* on the date of her arrival in Newport News, Va., on February 4, 1912, after the collision between her and the steamship

697

Alleghany, showing the value of petitioner's interest as of February 4, 1912, the date of the termination of her voyage, to be $70,419.14; and

WHEREAS on reading and filing the said affidavits an order was entered by the Court ordering the petitioner to file with the Clerk of this Court a stipulation for value in the sum of $70,500, with good and sufficient surety for the payment of said sum of $70,500 into Court, with interest thereon from February 4, 1912, being the date of the termination of the voyage of the steamship *Pomaron,* and further ordering that unless exceptions be filed to said stipulation for value in the sum of $70,500 on or before January 23, 1914, such stipulation for value shall stand as the appraisal by this Court of the amount or value of the interest of the petitioner in said steamship *Pomaron* and her pending freight; and

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WHEREAS on the filing of the said stipulation for value as ordered by the Court, an order was duly made and entered herein on or about the 8th day of October, 1914, by this Court and directing that the beginning or prosecution of any and all suits, actions or legal proceedings of any nature or description whatsoever against the steamship *Pomaron* or her owners in respect of any claim arising out of or connected with the collision between the steamship *Pomaron* and the steamship *Alleghany* on February 2, 1912, and the subsequent sinking of said steamship *Alleghany* on the same day, be stayed and restrained until the hearing and determination of the proceedings on the petition and directing that the service of the order as a restraining order be made in the manner usual in such proceedings; and

700

701 *Final Decree.*

WHEREAS an order was duly made and entered herein on or about the 8th day of October, 1914, directing that a monition issue out of and under the seal of the Court against all persons claiming damages for any and all losses, damages or injuries occasioned by or resulting from the collision between the steamship *Pomaron* and the steamship *Alleghany* on February 2, 1912,
702 citing all such persons to appear before this Court and make due proof of their respective claims on or before the 18th day of January, 1914, at 10:30 o'clock in the forenoon, and further ordering that Alexander Gilchrist, Jr., Esq., be appointed Commissioner to take proof of all claims presented pursuant to such monition subject to the right of any person to controvert or question the same with liberty also to
703 any person or persons claiming damages as aforesaid who shall have presented his or their claims to said Commissioner under oath to answer said petition, and further ordering that public notice of such monition should be given by publication in The Evening Mail, a newspaper published in the City of New York, as directed, and that a copy of said monition be served on the respective attorneys or proctors of all persons who at the time of making the other had filed
704 libels or begun suits for damage or loss or injury occasioned by or arising out of the collision aforesaid, together with a copy of the order, such service to be made at least thirty days before the return day; and

WHEREAS a monition citing all persons claiming damages for any loss, damage, injury or destruction occasioned by the collision aforesaid or by the subsequent sinking of the steamship

Alleghany was thereafter and on the 9th day of October, 1914, duly issued in pursuance of the last mentioned order, and said monition was thereafter, to wit, on the 18th day of January, 1915 the return day provided by the order, duly returned by the Marshal of the United States for the Southern District of New York with proof of the due citation of all parties interested by the due public notice of said monition made by the publication thereof in conformity with the direction for such service in said last mentioned order; and

WHEREAS the said Alexander Gilchrist, Jr., Esq., the Commissioner appointed as aforesaid, has duly made his report whereby it appears that claims were presented by the following in pursuance of said monition and order before the said return day, to wit:

Nord-Deutsche, Ins. Co., Union Ins. Co. of Canton, Ltd., the Corporation of Lloyds and Aetna Insurance Co.
N. H. Silvera
Laura Moore
Walter Oloffson, *et al.*
Eugene J. F. Coleman
Orton G. Orr
Francis W. Van Praag
Marshall K. Weidensaul
Louis Berschman
Hazan & Company
Yang-Tsze Ins. Assn., Ltd., *et al.*
Boston Insurance Company
Federal Insurance Company, *et al.*
United States of America
G. Kattan

709 *Final Decree.*

J. L. de Picciotto
A. Joseph
H. C. Bock
Walter D. Despard
Robert Dutton & Co.
Atlantic Mutual Insurance Co.
M. Dahens
710 H. Borday
A. Gagny, and

WHEREAS the defaults of all other persons than those who have presented claims as aforesaid were taken at the time of the return of said monition, to wit, the 18th day of January, 1915, and were duly noted and entered; and

WHEREAS this Court has by an order entered herein April 17, 1915, opened the default of Ger-
711 hard Arlt and said Gerhard Arlt has presented to the Commissioner, and the Commissioner has duly reported his claim under date of April 22, 1915; and

WHEREAS no claims other than the foregoing have been presented to Alexander Gilchrist, Jr., Esq., the Commissioner appointed as aforesaid, or have been filed by leave of this Court; and

WHEREAS on the return of the monition on the 18th day of January, 1915, proclamation was duly
712 made citing all persons claiming damages as aforesaid to appear and present their claims and to answer the libel and petition herein, and no other persons than those above mentioned having presented claims, appeared or answered; and

WHEREAS the time of all persons to file claims, file answer to the petition or exceptions to the stipulation for value has now expired and has not been extended by order of the Court, or

otherwise, and the right of all other persons to present claims is barred; and

WHEREAS the petitioner and all the claimants herein have compromised and settled the issues between them, and in consideration of the said compromise and settlement it has been agreed between the petitioner and all the claimants:

1. That the amount or value of the petitioner's 714
interest in the steamship *Pomaron* and her freight as of the date of her return to Newport News on February 4, 1912, after the collision, was and it is $70,419.14; and

2. That the exceptions filed to the provisional valuation herein are waived; and

3. That the collision aforesaid and the losses, injuries and damages consequent thereon occurred 715
without the petitioner's privity or knowledge; and

4. That the surety on petitioner's stipulation for value shall be and is exonerated from any and all liability in excess of the said $70,419.14 and interest by reason of any matter growing out of said collision; and

5. That the petitioner shall be and is exoner- 716
ated from any and all liability in excess of said $70,419.14 with interest thereon at 6% from February 4, 1912, amounting to $13,599.57, plus the additional amount of $9,139.68, with interest thereon at 2½% from October 1, 1913, amounting to $356.51, the latter amount being the amount received on October 1, 1913, from the owners of the steamship *Alleghany* as directed by the final decree of this Court entered September 26, 1913,

in the matter of the libel and petition of the Hamburg-American Line, owner of the steamship *Alleghany,* for limitation of liability; and

6. That on the payment into Court or to the claimants by the petitioner, of the sums of $70,-419.14, with interest amounting to $13,599.57 and $9,139.68, with interest amounting to $356.51,
718 as set forth in paragraph numbered 5 above, making an aggregate sum of $93,514.90, all bonds and stipulations for value and costs given by the petitioner for the payment into Court of any sum or sums of money representing the petitioner's interest in the steamship *Pomaron* and freight moneys, or for costs in this proceeding, shall be deemed to have been fulfilled and satisfied, and shall be forthwith, without
719 further consent or notice, cancelled and discharged of record by order of the Court; and

WHEREAS in consideration of the said compromise and settlement, the several claimants herein by agreement have fixed and adjusted the amounts of their several losses consequent on the said collision at the following sums, to wit:

Nord Deutsche Ins. Co., Union Ins. Co. of Canton, Ltd., the Corporation of	
720 Lloyds and Aetna Insurance Co.	$14,252.02
Interest from June 13, 1913,	1,591.47
M. H. Silvera	2,135.59
Interest from June 13, 1913,	238.48
Laura Moore	11,977.41
Interest from June 13, 1913	1,337.48
Walter Oloffson, *et al.*	2,039.97
Interest from June 13, 1913,	227.89
Eugene J. F. Coleman	5,706.27
Interest from June 13, 1913,	637.20

Eugene J. F. Coleman	35.00	
Interest from October 2, 1914,	1.17	
Orton G. Orr	28,250.85	
Interest from June 13, 1913,	3,154.68	
Frances W. Van Praag	1,115.57	
Interest from June 13, 1913,	124.57	
Marshall K. Weidensaul	1,118.27	
Interest from June 13, 1913,	124.87	722
Louis Berschman	30,815.22	
Interest from June 13, 1913,	3,441.03	
Hazan & Co.	1,247.35	
Interest from June 13, 1913,	139.30	
Yang-Tsze Ins. Assn. Ltd., *et al.*	19,737.59	
Interest from June 13, 1913,	2,204.03	
Yang-Tsze Ins. Assn. Ltd., *et al.*	74.91	
Interest from Oct. 2, 1914,	2.50	
Boston Insurance Company	9,768.93	
Interest from June 13, 1913	1,090.86	723
Federal Ins. Co., *et al.*	24,035.04	
Interest from June 13, 1913,	2,683.91	
Federal Ins. Co., *et al.*	38.50	
Interest from October 2, 1914,	1.28	
United States of America	4,998.49	
Interest from June 13, 1913,	558.17	
G. Kattan	161.37	
Interest from Feb. 2, 1912,	31.23	
J. L. de Picciotto	1,145.30	
Interest from Feb. 2, 1912,	221.55	724
A. Joseph	1,126.33	
Interest from Feb. 2, 1912,	217.88	
H. C. Bock	1,125.03	
Interest from Feb. 2, 1912,	217.63	
Walter D. Despard	14,831.24	
Interest from June 13, 1913,	1,656.15	
Roberts, Dutton & Co.	1,658.72	
Interest from Feb. 2, 1912,	320.88	

725 *Final Decree.*

Atlantic Mutual Ins. Co.	16,745.00
Interest from Feb. 2, 1912,	3,239.35
M. Dahens	522.74
Interest from Feb. 2, 1912,	101.15
H. Borday	198.69
Interest from Feb. 2, 1912,	38.45
A. Gagny	266.94
Interest from Feb. 2, 1912,	51.65
726 Gerhardt Arlt	2,000.00

Now on the subjoined admissions of correctness of the foregoing recitals and the subjoined consents and waivers of settlement in respect of the entry of this decree made by the proctors for all claimants herein, and on motion of Burlingham, Montgomery & Beecher, proctors for
727 the petitioner, it is

ORDERED, ADJUDGED AND DECREED that the collision between the steamship *Pomaron* and the steamship *Alleghany* and the various losses consequent thereon happened without the privity or knowledge of the petitioner; that the amount or value of the petitioner's interest in the steamship *Pomaron* and her pending freight is the sum of $70,419.14, and that the liability of the petitioner herein for any and all loss, damage,
728 destruction, injury or fatality arising from or growing out of the collision aforesaid and for any debts, claims or demands whatsoever arising from or growing out of the voyage of the steamship *Pomaron* upon which said collision happened, be and it hereby is limited, in accordance with Sections 4283, 4284 and 4285 of the Revised Statutes of the United States and the various acts and statutes amendatory thereof and sup-

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plemental thereto, to the said sum of $70,419.14, and it is hereby further

ORDERED, ADJUDGED AND DECREED that the petitioner, Furness, Withy & Company, Ltd., pay or cause to be paid, into the registry of this Court the sums of $70,419.14 and $9,139.68, with interest at 6% on $70,419.14 from February 4, 1912, amounting to the sum of $13,599.57, and with interest at 2½% on $9,139.68 from October 1, 730
1913, amounting to the sum of $356.51, making an aggregate sum of $93,514.90, in full payment and settlement of all claims against it arising from said collision;

And the petitioner having paid into the registry of this Court, concurrently with the entry of this decree, the said sums of $70,419.14 and $9,139.68, with interest as above set forth, it is further

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ORDERED, ADJUDGED AND DECREED that the petitioner and its surety be and they hereby are released from all further liability under the said stipulation for value filed herein in the sum of $70,500 or otherwise by reason of any matter or thing arising from or growing out of the said collision; that any and all lien or liens or claims upon or against the steamship *Pomaron* or its owner, if such liens there be, arising from or growing out of said collision or any matter or 732
thing happening upon the voyage aforesaid be and they hereby are divested and discharged and transferred to the said fund of $70,419.14, and that all bonds, stipulations for value and stipulations for costs filed herein by the petitioner or by any party, be and they hereby are cancelled and discharged of record; and it is further

ORDERED, ADJUDGED AND DECREED that the Clerk of this Court pay, or cause to be paid, to each

participating claimant, or his proetor or proctors, his ratable share of the sums of $70,419.14 and $9,139.68 and interest as above set forth remaining in the registry after payment to the petitioner or its proctors of the proper expenses of the limitation proceeding in the sum of $140.36 and the fees and charges of the officers of this Court in the sum of $944.89, amounting in all to
734 the sum of $1085.25 in proportion to the amount of his claim as fixed and adjusted in pursuance of the agreement hereinbefore recited, on condition, nevertheless, that each claimant entitled to share in said fund, or his proctors or proctor in his behalf, execute a receipt for the sum so received, expressly discharging from liability in respect of the collision aforesaid the steamship *Pomaron,* her owners and charterers and re-
735 nouncing any and every right of action or suit other than herein against them or any of them or against the said steamship *Pomaron* in law and in admiralty in any Court of any country or jurisdiction; and it is hereby further

ORDERED, ADJUDGED AND DECREED that the default of all persons and corporations that may have sustained any loss, destruction, damage or injury arising from or growing out of the aforesaid collision or in respect of any matter or thing
736 happening on the aforesaid voyage, and who have not heretofore presented or filed claims, be and the same hereby is entered, and that all claims which have not heretofore been presented or filed in this proceeding be and they hereby are forever barred, and that the petitioner and the said steamship *Pomaron,* her engines, boilers, tackle, apparel and furniture, and her pending freight, be and they hereby are discharged from all liability in respect thereof; and it is further

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ORDERED that the claimants above named, their several agents, attorneys, proctors and counsel refrain from any further action or prosecution of proceedings taken by them in their own behalf or in behalf of others against this petitioner or against the steamship *Pomaron,* except under this decree, to recover for the losses, damages and injuries aforesaid; and it is further

738

ORDERED that all persons claiming, or who may hereafter claim for any loss, destruction, damage or injury occasioned by the collision aforesaid, be and they hereby are perpetually restrained and enjoined from bringing or instituting or from prosecuting any suit or suits or proceedings in any Court of any jurisdiction or country whatever upon any cause of action against the petitioner herein or the steamship *Pomaron* for any loss, damage or injury done, 739 suffered or occasioned by reason of the loss and disaster caused by the collision aforesaid or by the sinking of the steamship *Alleghany* thereafter; and it is further

ORDERED that the service of this decree may be made within the Southern District of New York by any person of full age by delivering a copy thereof to any person or corporation to be served, its attorney or attorneys, proctor or proctors, and that it may be made in any District of the United 740 States, other than the Southern District of New York, by the United States Marshal for such District or Districts respectively by delivering a copy of such decree and exhibiting a certified copy thereof to the party, person or corporation, their attorney or attorneys, proctor or proctors.

LEARNED HAND,
Judge.

A. G., Jr.

741 *Final Decree.*

The undersigned proctors for all the parties herein hereby admit the truth of the recitals contained in the foregoing decree and consent to the entry thereof, without further notice.

CONVERS & KIRLIN,
Proctors for Yang-Tsze Insurance Association, Ltd., *et al.*

742 HARRINGTON, BIGHAM & ENGLAR,
Proctors for Walter D. Despard, *et al.*
KNEELAND, HARISON & HEWITT,
Proctors for Federal Insurance Co., *et al.*
BARRY, WAINWRIGHT, THACHER & SYMMERS,
Proctors for Walter Oloffson, *et al.*
WILLIAMS & STEVENSON,
Proctors for Boston Insurance Company.
H. SNOWDEN MARSHALL,
Proctors for United States of America.

743 BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Petitioner.
ARTHUR B. CHURCH,
Proctor for Gerhardt Arlt.

[Endorsed:]—District Court of the United States, Southern District of New York—In the Matter of the Libel and Petition of Furness, Withy & Co., Ltd., as owner of the S. S. *Pomaron* for Limitation of Liability—
744 Final Decree—Burlingham, Montgomery & Beecher, Proctors for Petitioner, 27 William Street, Borough of Manhattan, New York City—United States District Court—Filed April 22, 1915, S. D. N. Y.

Note of Issue. 745

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter of The Petition of FURNESS, WITHY AND COMPANY, LTD., owner of the Steamship "POMARON", for limitation of liability.	Note of Issue. 746

Motion to vacate final decree noticed for July 1, 1915.

Dated, June 30, 1915. 747

BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Petitioner.

CONVERS & KIRLIN,
HARRINGTON, BIGHAM & ENGLAR,
KNEELAND, HARISON & HEWITT,
BARRY, WAINWRIGHT, THACHER & SYMMERS,
H. SNOWDEN MARSHALL,
WILLIAM & STEVENSON,
ARTHUR B. CHURCH, 748
Protors for Claimants.

[Endorsed:]—Filed June 30, 1915.

749 *Order.*

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter of 750 The Petition of FURNESS, WITHY AND COMPANY, LTD., owner of the Steamship "POMARON", for limitation of its liability.	Order.

On the annexed affidavit of Norman B. Beecher, verified June 30, 1915, and sufficient cause appear-
751 ing therefor, it is

Ordered that the claimants and their proctors named below show cause before this Court, at the court rooms thereof, in the Post Office Building, Borough of Manhattan, City of New York, at 10:30 A. M. on July 1, 1915, why the final decree entered in this proceeding April 22, 1915, should not be opened and vacated, amended and corrected, and why this proceeding should not be continued until the United States Supreme Court has rendered its
752 decision on the writ of certiorari to the Circuit Court of Appeals for the Second Circuit, granted June 16, 1915, in the suit of Furness, Withy & Company, Limited, Appellant, against the Yangtsze Insurance Association, Ltd., *et al,* Appellees, and why, in the event that the Supreme Court reverses or modifies the determination of the Circuit Court of Appeals in said suit, restitution should not be decreed to the petitioner of the moneys paid

753

by it under said final decree entered April 22, 1915, and why such other and further relief should not be granted as may be just, and it is

Further Ordered that service of this order and the affidavit on which it is granted on Messrs. Convers & Kirlin, proctors for the Yang-tsze Insurance Association, Ltd., Nord Deutsche Insurance Company, Union Insurance Company of Canton, Ltd., the Corporation of Lloyds and Aetna Insurance Company; on Messrs. Harrington, Bigham & Englar, proctors for Laura Moore, Eugene J. F. Coleman, Orton G. Orr, Frances W. Van Praag, Marshall K. Weidensaul, Louis Bertschman, G. Kattan, J. L. de Piccioto, A. Joseph, H. C. Bock, Walter D. Despard, Roberts Dutton & Co., M. Dahens, H. Borday, and A. Gagny; on Messrs. Williams & Stevenson, proctors for the Boston Insurance Company; on Messrs. Kneeland, Harrison & Hewitt, proctors for the Federal Insurance Company, the Sea Insurance Company, London Insurance Corporation, and Atlantic Mutual Insurance Company; on H. Snowden Marshall, Esq., proctor for the United States of America; on Messrs. Barry, Wainwright, Thacher & Symmers, proctors for N. H. Silvera, Walter Oloffson, Robert Luacas, C. Lyon Paul, and Hazen & Co.; and on Arthur B. Church, Esq., proctor for Gerhardt Arlt, on June 30, 1915, shall be good and sufficient service on said proctors and on each and all of the claimants respectively represented by said proctors.

754

755

756

Dated, New York, June 30, 1915.

JULIUS M. MAYER,
District Judge.

757 *Affidavit.*

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

758 of

The Petition of FURNESS, WITHY AND COMPANY, LTD., owner of the Steamship "POMARON", for limitation of its liability.

STATE OF NEW YORK, } ss:
759 County of New York, }

NORMAN B. BEECHER, being duly sworn, says: I am a member of the firm of Burlingham, Montgomery & Beecher, and one of the proctors for the petitioner herein.

Fifteen suits in admiralty were brought in this Court to recover from Furness, Withy & Company, Limited, damages alleged to have been sustained by a collision between its steamship
760 *Pomaron* and the Hamburg American Line steamship *Alleghany* on February 2, 1912. Such proceedings were had in said suits that this Court on June 13, 1913, entered a decree against Furness, Withy & Company, Limited, in the sum of $172,029.81 for the loss and damage therein alleged to have been sustained.

Thereafter Furness, Withy & Company appealed to the Circuit Court of Appeals for the Second Circuit, which, on June 20, 1914, affirmed

761

the decree of the District Court, with interest and costs.

The opinion of this Court and the Circuit Court of Appeals and the original decree of this Court, as well as the mandate of the Circuit Court of Appeals, and the decree entered in this Court thereon, and all other papers and proceedings in said fifteen suits, are hereby referred to and made a part hereof. The decision of the Circuit Court of Appeals is reported in 215 Fed. Rep. 859.

762

On April 12, 1915, Furness, Withy & Company, Limited, applied to the Supreme Court of the United States for a writ of certiorari, which was on April 19, 1915, denied by said Court.

On October 5, 1914, Furness, Withy & Company, Limited, filed its petition in this Court to limit its liability. This petition was filed because of the aforesaid final adjudication of liability against the petitioner, and in order to protect rights which might otherwise have been defeated.

763

No proceedings of consequence under this petition to limit liability were had until after the denial by the Supreme Court on April 19, 1915, of the aforesaid petition for a writ of certiorari. Thereafter, and on April 22, 1915, a final decree, which is hereby referred to and made a part hereof, was entered in this limitation proceeding, directing that the petitioner pay into the registry of this Court $93,514.90 in full payment and settlement of all claims against it arising from the aforesaid collision between the steamship *Pomaron* and the steamship *Alleghany*. The payment directed was made by the petitioner.

764

The amount so directed to be paid and paid by the petitioner was on account of the claims included in and covered by the decree of this Court

765 as affirmed pursuant to the mandate of the Circuit Court of Appeals. Said final decree in this limitation proceeding was made and the payment thereunder by the petitioner was made for the reason that after the denial by the Supreme Court of its petition for a writ of certiorari the petitioner could not further contest its liability as adjudged,
766 and was bound to pay the amount paid under said final decree.

Subsequent to the making of said final decree and the payment by the petitioner of said sum of $93,514.90 thereunder, and on May 10, 1915, on information and belief, the United States Supreme court granted a writ of certiorari in the suit of Olaf Lie, master of the Norwegian steamship *Selja,* against the San Francisco & Portland Steamship Company, which, upon information and
767 belief, was a case of collision very similar in principle to the collision between the *Pomaron* and the *Alleghany.* Thereupon the petitioner renewed its application for a writ of certiorari, and on June 16, 1915, the Supreme Court granted the writ.

By virtue of the granting of the writ of certiorari the liability of the petitioner is now open to review on the merits of the Supreme Court. If the Supreme Court reverses the determination
768 of the Circuit Court of Appeals your petitioner will be entitled to restitution of the moneys paid. Under these circumstances it is necessary that the final decree entered in this limitation proceeding April 22, 1915, should be opened and vacated, amended and corrected, and that this proceeding should be continued until such time as the Supreme Court renders its decision in the proceedings under the aforesaid writ of certiorari.

Wherefore, it is respectfully prayed that an

769

order to show cause be granted, returnable July 1, 1915, directing that the claimants in this proceeding, and their proctors, show cause why the aforesaid final decree in this limitation proceeding should not be opened and vacated, amended and corrected, and this proceeding continued until the Supreme Court has rendered its decision on the writ of certiorari, and why, in the event that 770
the Supreme Court reverses the determination of the Circuit Court of Appeals, restitution of the money paid should not be decreed to the petitioner, and why such other and further relief should not be granted as may be just.

An order to show cause is requested for the reason that there is not sufficient time before July 1, to give the usual notice of motion, and it is necessary that this application should be made on that day. 771

NORMAN B. BEECHER.

Sworn to before me this }
30th day of June, 1915. }

ROSCOE H. HUPPER,
(Seal) Notary Public,
New York County, No. 1621.

[Endorsed:]—District Court of the United States, Southern District of New York — In the 772
Matter of the petition of Furness, Withy & Company, Limited, owner of the Steamship *Pomaron*, for Limitation of its Liability—Order to Show Cause and Affidavit—Burlingham, Montgomery & Beecher, Proctors for Petitioner, 27 William Street, Borough of Manhattan, New York City—Filed July 2, 1915.

See page 195

773 *Affidavit.*

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

774 of

The Petition of FURNESS, WITHY AND COMPANY, LTD., owner of the Steamship "POMARON", for limitation of liability.

Southern District of New York, ss.:

775 LAWRENCE KNEELAND, being duly sworn, deposes and says:

I am a member of the firm of Kneeland, Harison & Hewitt and said firm were the proctors for the Federal Insurance Company, Sea Insurance Company, Limited, London Assurance Corporation and Atlantic Mutual Insurance Company, claimants in this proceeding.

The order to show cause which is now before this Court for hearing was served upon my said
776 firm but my said firm did not sign any admission of service thereof.

After the final decree was entered in this proceeding on April 22, 1915, and on the 1st day of May, 1915, the Clerk of this Court paid to my said firm out of the moneys deposited in Court by the petition herein, the sum of $19,568.73, which was the total amount payable under the decree herein to the above named claimants,

777

and upon the 4th day of May, 1915, my said firm paid and distributed the sum so received among the above named claimants.

LAWRENCE KNEELAND.

Sworn to before me this
1st day of July, 1915.

MARTIN J. WILSON,
[SEAL] Notary Public,
Kings County, No. 169.

778

Certificate Filed in New York County, No. 181.

[Endorsed:]—United States District Court, Southern District of New York—In the Matter of the Petition of Furness, Withy & Company, Limited, owner of the Steamship *Pomaron*, for Limitation of Liability—Affidavit—Copy Received, Burlingham, Montgomery & Beecher—July 6, 1915—Filed July 2, 1915.

779

From page 193:

State of New York } ss.: G. Noyes Slayton being duly sworn
County of New York } says, that he is upwards of 21 years of age
that on the 30th day of June in the year one thousand nine hun
and fifteen, served a copy of the within order to show cause
affidavit on Conners & Kirlin at 27 William Street, Bar
Hornaught Thacher & Symmers at 59 Wall St., Harrington
Ham and Taylor at 64 Wall St., Milburn & Stevenson at 27
St., Arthur B. Church at 27 Cedar St., Kneeland Harrison
at 43 Cedar St. and H. Snowden Marshall at the P.O. Bl
all within the city of N. Y. by delivering the same to the ma
clerk at each person's office with the sole exception of Barn
Hornaught Thacher & Symmers where it was delivered to Mr. Sy

780

G. Noyes Slayton.

Sworn to before me this 30th day of June 1915—

(Seal) Roscoe H. Hupper, Notary Public N. Y. Co #13

781 *Affidavit.*

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

782 The Petition of FURNESS, WITHY AND COMPANY, LTD., owner of the Steamship "POMARON", for limitation of its liability.

STATE OF NEW YORK,
County of New York, } ss.:

783 D. ROGER ENGLAR, being duly sworn, deposes and says: That he is a member of the firm of Harrington, Bigham & Englar, who were formerly proctors for Laura Moore, Eugene J. F. Coleman, Orton G. Orr, Frances W. Van Praag, Marshall K. Weidensaul, Louis Bertschman, G. Kattan, J. L. de Piccioto, A. Joseph, H. C. Bock, Walter D. Despard, Roberts Dutton & Co., M. Dehans, M. Borday, and A. Gagny, claimants in the above entitled proceedings.

784 On April 22nd, 1915, a final decree was entered in the above entitled proceedings wherein, among other things, the Court ordered, adjudged and decreed that the petitioner's liability was limited in the sum of $93,514.90, and directed that the said petitioner pay the said sum of money into the registry of the Court for distribution in accordance with the terms of the said decree. It was further ordered, adjudged and decreed

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by the said final decree that the claimants above named, formerly represented by deponent's firm as proctors, be paid their *pro rata* share of the said sum of money surrendered by the petitioner in the said proceedings.

In accordance with the terms of the said decree, the said sum of $93,514.90 was paid into the registry of this Court by the said 786
petitioner and the said sum of money was distributed by the Clerk of this Court in accordance with the terms of said decree. Deponent's firm received from the Clerk of this Court the sums of money awarded to the various claimants who were represented by them as proctors at that time. The money so paid to deponent's firm, as proctors, was then paid out by them to the various persons entitled thereto, and deponent's firm was paid their fees and disbursements for 787
services rendered. The accounts of deponent's firm with the various claimants in this case have now been closed and the relation of proctor and client which formerly existed between them and various claimants in the above entitled proceeding has terminated.

The said firm of Harrington, Bigham & Englar have received no instructions or retainers from the said claimants since their accounts were 788
closed as aforesaid, and are not now authorized to act on behalf of any of the said claimants.

D. Roger Englar.

Sworn to before me this
1st day of July, 1915.

Mathilda M. Kaempffe,
[Seal] Notary Public, #1901,
New York County.

789 *Affidavit.*

[Endorsed:]—United States District Court, Southern District of New York—In the Matter of the Petition of Furness, Withy & Company, Limited, owner of the Steamship *Pomaron*, for Limitation of its Liability—Affidavit—Harrington, Bigham & Englar, 64 Wall Street, New York City—Filed July 2, 1915.

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791

792

Affidavit. 793

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of 794

The petition of FURNESS, WITHY & COMPANY, LTD., for Limitation of its Liability, as Owner of the Steamship "POMARON".

STATE OF NEW YORK,
County of New York, } ss:

L. DEGROVE POTTER, being duly sworn, says: 795

I am an attorney and managing clerk in the office of Convers & Kirlin.

The petition herein was filed on October 5, 1914, by the owner of the steamship *Pomaron* for a limitation of its liability for damages arising out of the collision of between the *Pomaron* and the *Alleghany* on February 2, 1912.

Numerous suits had been instituted against the *Pomaron* by various parties to recover dam- 796
ages resulting from the collision. Among those suits were libels filed by Convers & Kirlin as proctors for Yang-tsze Insurance Association, Limited, U. S. Lloyds, Indemnity Mutual Marine Insurance Company, Limited, Nord-Deutsche Insurance Company, Union Insurance Society of Canton, Limited, Commercial Union Assurance Company, Limited, the Corporation of Lloyds and the Aetna Insurance Company.

797 *Affidavit.*

Those libels went to final decree in which the *Pomaron* was adjudged in fault for the collision, and the various libelants were adjudged entitled to recover their damages.

The decrees were affirmed by the United States Circuit Court of Appeals and final decrees on mandate were entered on October 3, 1914. Two days thereafter, on October 5th,
798 the petition for limitation of liability was filed herein.

On January 18, 1915, claims were filed herein by Convers & Kirlin as proctors for Yang-tsze Insurance Association, Limited, U. S. Lloyds, Indemnity Mutual Marine Insurance Company, Limited, Nord-Deutsche Insurance Company, Union Insurance Society of Canton, Limited, Commercial Union Assurance Company, Limited,
799 the Corporation of Lloyds and the Aetna Insurance Company.

On April 22, 1915, a final decree was entered in these proceedings by consent, limiting the liability of the petitioner to the sum of $93,514.90. This decree directed the petitioner to pay the said sum into Court and the clerk of the Court was directed to distribute the said sum *pro rata* among the various claimants in accordance with the terms of the decree.

800 Thereafter the said sum of $93,514.90 was paid by the petitioner into the registry of the Court and was disbursed by the clerk of the Court in accordance with the terms of the decree. The proportion of the said sum that was due to the various claimants represented by Convers & Kirlin was paid to them by the clerk and by them has been paid out to their clients, less appropriate charges for fees and disbursements.

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The accounts with the said clients with repect to this transaction were then closed.

L. DEGROVE POTTER.

Sworn to before me this
2nd day of July, 1915.

M. W. MACLAY, JR.

802

[Endorsed:]—United States District Court Southern Dist. of New York—In the Matter of the Petition of Furness, Withy & Company, Ltd., for Limitation of its Liability, as Owner of the Steamship *Pomaron*—Affidavit—Convers & Kirlin, Proctors for Claimants, 27 William Street, New York, N. Y.—Filed July 2, 1915.

803

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805 *Notice of Motion.*

In the Matter
of
The Petition of FURNESS, WITHY AND COMPANY, LTD., owner of the Steamship "POMARON", for limitation of liability.

806 SIRS:

TAKE NOTICE that the within will be presented to Hon. Augustus N. Hand for settlement and signature at his chambers in the Woolworth Building, at 10 A. M., July 3, 1915.

Dated, New York, July 2, 1915.

BURLINGHAM, MONTGOMERY & BEECHER,
Attorneys for Petitioner,
Office & P. O. Address,
807 27 William Street,
New York City.

To:

MESSRS. CONVERS & KIRLIN,
Proctors for Yang-Tsze
Insurance Association, *et al.*,
MESSRS. HARRINGTON, BIGHAM AND ENGLAR,
Proctors for Laura Moore, *et al.*,
MESSRS. WILLIAM AND STEVENSON,
Proctors Boston Insurance Company,
808 MESSRS. KNEELAND, HARRISON & HEWITT,
Proctors for Federal Insurance Company, *et al.*,
H. SNOWDEN MARSHALL, ESQ.,
Proctor for the United States of America,
MESSRS. BARRY, WAINRIGHT, THACHER & SYMMERS,
Proctors for M. H. Silvera, *et al.*,
ARTHUR B. CHURCH, ESQ.,
Proctor for Gerhardt Arlt.

Order. 809

At a Stated Term of the United States District Court for the Southern District of New York, held at the Court Rooms in the Woolworth Building, Borough of Manhattan, City of New York, on the 3rd day of July, 1915.

Present—Hon. AUGUSTUS N. HAND, 810
District Judge.

In the Matter

of

The Petition of FURNESS, WITHY AND COMPANY, LTD., owner of the Steamship "POMARON", for limitation of liability. 811

The petitioner, Furness, Withy & Company, Limited, having moved that the final decree entered in this proceeding April 22, 1915, be opened and vacated, amended and corrected, and that this proceeding be continued until the United States Supreme Court has rendered its 812 decision on the writ of certiorari to the Circuit Court of Appeals for the Second Circuit, granted June 16, 1915, in the suit of Furness, Withy & Company, Ltd., appellants against the Yangtsze Insurance Comyany, Ltd., *et al.*, appellees, and that in the event that the Supreme Court reverses or modifies the determination of the Circuit Court of Appeals in said suit, restitution

be decreed to the petitioner of the moneys paid by it under said final decree entered April 22, 1915, and that such other and further relief be granted as may be just;

And said motion having duly come on to be heard on July 1, 1915, on the order to show cause dated June 30, 1915, and having been duly adjourned in open court to July 2, 1915, at 2 o'clock P. M. and having been further adjourned until July 3, 1915, at 10 o'clock, A. M., and it appearing that said order to show cause was duly served on the proctors named therein, and that said motion was made within the term at which the final decree entered April 22, 1915, was entered as extended by the rules of this Court,

Now, on reading and filing the order to show cause dated June 30, 1915, and the affidavit of Norman B. Beecher, verified June 30, 1915, in support of the motion, and the affidavits of Lawrence Kneeland and D. Roger Englar, verified July 1, 1915, and of L. de Grove Potter, verified July 2, 1915, in opposition thereto, and on all the proceedings herein, it is

ORDERED that no decision be made on the question of the sufficiency of the service herein or the merits of this motion at the present time, nor until the United States Supreme Court shall have rendered its decision on the aforesaid writ of certiorari to the Circuit Court of Appeals for the Second Circuit, granted June 16, 1915, and that the term of this Court for all purposes of the relief sought by the petitioner herein be and it hereby is extended until the aforesaid decision of the United States Supreme Court and until appropriate action thereunder by the

817

Circuit Court of Appeals and by this Court, and it is further

ORDERED that the said motion be and the same hereby is continued until the further order of this Court.

AUGUSTUS N. HAND,
D. J.

818

[Endorsed:]—United States District Court, Southern District of New York—In the Matter of The Petition of Furness, Withy & Company, Limited, owner of the steamship *Pomaron*, for Limitation of Liability—Order—Burlingham, Montgomery & Beecher, Attorneys for Petitioner, 27 William Street, Borough of Manhattan, New York City—Filed July 3, 1915.

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821 *Clerk's Certificate.*

UNITED STATES OF AMERICA, }
Southern District of New York, } ss.:

In the Matter
of
822 The Petition of FURNESS, WITHY & COMPANY, Limited, for Limitation of Liability as owners of the steamship "POMARON."

I, ALEXANDER GILCHRIST, JR., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript
823 of the record of the said District Court in the above entitled matter, pages 14, 15, 25, 26, 27, 147 and 206 not being certified because they are duplicates of pages here

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto amxed, at the City of New York, in the Southern District of New York, this 9th day of December, in the year of our Lord one thousand nine hundred and sixteen —and of the Independence of the said United States the one hundred and ~~thirty~~ .
824

Alexander Gilchrist, Jr.,
Clerk.

Seal.

they certified or not included in the Record.

[redacted]

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

FURNESS, WITHY & COMPANY, LIMITED, Respondent-Appellant, Petitioner,	
AGAINST	No. 106.
YANG-TSZE INSURANCE ASSOCIATION, LIMITED, and others, Libellants-Appellees, Respondents.	

BRIEF IN SUPPORT OF MOTION TO DISMISS OR AFFIRM.

The above entitled case is now before this Court on a writ of certiorari directed to the Circuit Court of Appeals for the Second Circuit. The petitioner, Furness, Withy & Company, Limited, seeks to review in this Court a decision of the United States Circuit Court of Appeals for the Second Circuit affirming decrees in favor of various libellants in actions brought against the said Furness, Withy & Company, Limited, as owner of the steamship *Pomaron*, which collided with and sank the steamship *Alleghany* outside the Virginia Capes on February 2nd, 1912. The libellants were owners of or underwriters on cargo which was on board and lost with the steamship *Alleghany*.

The United States District Court for the Southern District of New York and the United States

Circuit Court of Appeals for the Second Circuit held that both steamers were at fault for the collision and that the libellants were, therefore, entitled to recover from the present petitioner, Furness, Withy & Company, Limited, the amount of their respective claims.

The purpose of the present motion is to bring to the notice of the Court the fact that there remains no substantial controversy between the parties to the above entitled proceeding; that all of the issues between the parties have been settled and compromised; and that, if this Court proceeds to decide the above proceeding on the merits, it will merely have decided a moot case.

This Court has repeatedly decided that it will not pass upon questions which involve no substantial controversy between the parties; and the fact that a case involves only a moot question may be shown by evidence outside the record, and at any stage of the proceeding—even after argument on the merits.

Dakota County v. *Glidden*, 113 U. S., 222.
Elwell v. *Fosdick*, 134 U. S., 500.
Little v. *Bowers*, 134 U. S., 547.
Mills v. *Green*, 159 U. S., 651.
Codlin v. *Kohlhausen*, 181 U. S., 151.
American Book Co. v. *Kansas*, 193 U. S., 49.
Jones v. *Montague*, 194 U. S., 147.
Hooker v. *Burr*, 194 U. S., 415, 419.
Security Life Ins. Co. v. *Prewitt*, 200 U. S., 446.
Fisher v. *Baker*, 203 U. S., 174, 181.
Buck's Stove & Range Co. v. *American Federation of Labor*, 219 U. S., 581.
United States v. *Hamburg American, etc. Co.*, 239 U. S., 466.

Accordingly, if the issues between the parties in the present case have been compromised and settled, the writ of certiorari should be dismissed or the judgment of the Circuit Court of Appeals should be affirmed.

Three days after judgment had been entered in the United States District Court for the Southern District of New York on the mandate of the Circuit Court of Appeals, and before any proceedings for execution under the judgment were had, or any moneys were paid to the libellants in pursuance of said judgment, Furness, Withy & Company, Limited, respondent below and petitioner here, filed in the said United States District Court for the Southern District of New York a petition for a limitation of its liability as owner of the said steamship *Pomaron*.

This petition was filed on October 5th, 1914.

The usual monition and injunction issued out of the District Court, and the final decree on mandate was thereby stayed and became wholly inoperative for the purpose of enforcing payment; and no payment was, in fact, made at any time under the said judgment.

Thereafter the petitioner, Furness, Withy & Company, Limited, applied to this Court for a writ of certiorari to review the decision of the said United States Circuit Court of Appeals—which writ was denied by this Court on April 19th, 1915 (238 U. S. 625).

In the meanwhile claims had been filed in the limitation proceedings, not only by the claimants who had appeared as libellants and had obtained judgments in the previous actions in the District Court, but also by a number of other persons who had filed no libels and had taken no part in the previous proceedings.

On April 22nd, 1915, pursuant to a detailed

agreement of settlement and compromise between all the parties to the limitation proceedings, a decree was entered in those proceedings, which recites on its face that it is entered pursuant to an agreement whereby *"the petitioner and all the claimants herein have compromised and settled the issues between them."*

(The Limitation Record, p. 179).

The respondents submit herewith a certified copy of the entire record in the limitation proceedings which, when taken in connection with the record of the original proceedings in the District Court and the Circuit Court of Appeals, establishes every fact material to the question presented by this motion.

A more detailed statement of the material facts is contained in the affidavit of John M. Woolsey, Esq., verified the ninth day of December, 1916, which is herewith submitted.

As the final decree in the limitation proceedings lies at the foundation of the present motion, we quote the following material portions of that decree:

> "Whereas the petitioner and all the claimants herein have compromised and settled the issues between them, and in consideration of the said compromise and settlement it has been agreed between the petitioner and all the claimants:
>
> "1. That the amount or value of the petitioner's interest in the steamship *Pomaron* and her freight as of the date of her return to Newport News on February 4, 1912, after the collision, was and it is $70,419.14; and
>
> "2. That the exceptions filed to the provisional valuation herein are waived; and

"3. That the collision aforesaid and the losses, injuries and damages consequent thereon occurred without the petitioner's privity or knowledge; and

"4. That the surety on petitioner's stipulation for value shall be and is exonerated from any and all liability in excess of the said $70,419.14 and interest by reason of any matter growing out of said collision; and

"5. That the petitioner shall be and is exonerated from any and all liability in excess of said $70,419.14 with interest thereon at 6% from February 4, 1912, amounting to $13,599.57, plus the additional amount of $9,139.68, with interest thereon, at 2½% from October 1, 1913, amounting to $356.51, the latter amount being the amount received on October 1, 1913, from the owners of the steamship *Alleghany* as directed by the final decree of this Court entered September 26, 1913, in the matter of the libel and petition of the Hamburg-American Line, owner of the steamship *Alleghany* for limitation of liability; and

"6. That on the payment into Court or to the claimants by the petitioner, of the sums of $70,419.14, with interest amounting to $13,599.57 and $9,139.68, with interest amounting to $356.51, as set forth in paragraph numbered 5 above, making an aggregate sum of $93,514.90, all bonds and stipulations for value and costs given by the petitioner for the payment into Court of any sum or sums of money representing the petitioner's interest in the steamship *Pomaron* and freight moneys, or for costs in this proceeding, shall be deemed to have been fulfilled and satis-

fied, and shall be forthwith, without further consent or notice, cancelled and discharged of record by order of the Court; and

"WHEREAS in consideration of the said compromise and settlement, the several claimants herein by agreement have fixed and adjusted the amounts of their several losses consequent on the said collection at the following sums, to wit:

* * * * *

"Now on the subjoined admissions of correctness of the foregoing recitals and the subjoined consents and waivers of settlement in respect of the entry of this decree made by the proctors for all claimants herein, and on motion of Burlingham, Montgomery & Beecher, proctors for the petitioner, it is

ORDERED, ADJUDGED AND DECREED that the collision between the steamship *Pomaron* and the steamship *Alleghany* and the various losses consequent thereon happened without the privity or knowledge of the petitioner; that the amount or value of the petitioner's interest in the steamship *Pomaron* and her pending freight is the sum of $70,419.14, and that the liability of the petitioner herein for any and all loss, damage, destruction, injury or fatality arising from or growing out of the collision aforesaid and for any debts, claims or demands whatsoever arising from or growing out of the voyage of the steamship *Pomaron* upon which said collision happened, be and it hereby is limited, in accordance with Sections 4283, 4284 and 4285 of the Revised Statutes of the United States and the various acts and statutes amendatory thereof and supplemental thereto, to the said sum of $70,419.14, and it is hereby further

"ORDERED, ADJUDGED AND DECREED that the petitioner, Furness, Withy & Company, Ltd., pay or cause to be paid, into the registry of this Court the sums of $70,419.14 and $9,-139.68, with interest at 6% on $70,419.14 from February 4, 1912, amounting to the sum of $13,599.51, and with interest at 2½% on $9,-139.68 from October 1, 1913, amounting to the sum of $356.51, making an aggregate sum of $93,514.90, in full payment and settlement of all claims against it arising from said collision;

"And the petitioner having paid into the registry of this Court, concurrently with the entry of this decree, the said sums of $70,-419.14 and $9,139.68, with interest as above set forth, it is further

"ORDERED, ADJUDGED AND DECREED that the petitioner and its surety be and they hereby are released from all further liability under the said stipulation for value filed herein in the sum of $70,500 or otherwise by reason of any matter or thing arising from or growing out of the said collision; * * * * * and it is further

"ORDERED, ADJUDGED AND DECREED that the Clerk of this Court pay, or cause to be paid, to each participating claimant, or his proctor or proctors, his ratable share of the sums of $70,419.14 and $9,139.68 and interest as above set forth remaining in the registry after payment to the petitioner or its proctors of the proper expenses of the limitation proceeding in the sum of $140.36 and the fees and charges of the officers of this Court in the sum of $944.89, amounting in all to the sum of $1,085.25 in proportion to the amount of his claim as fixed and adjusted in pursuance of

> the agreement hereinbefore recited, on condition, nevertheless, that each claimant entitled to share in said fund, or his proctors or proctor in his behalf, execute a receipt for the sum so received, expressly discharging from liability in respect of the collision aforesaid the steamship *Pomaron,* her owners and charterers and renouncing any and every right of action or suit other than herein against them or any of them or against the said steamship *Pomaron* in law and in admiralty in any Court of any country or jurisdiction; * * *" (Limitation Record, pages 179-184).

* * * * * * *

The Court's attention is called particularly to the following circumstances in connection with the limitation proceedings:

(I) Neither the petition nor the final decree makes the slightest reference to the previous proceedings in the District Court and Circuit Court of Appeals; or to the decisions of those Courts.

(II) The petitioner did not admit liability, but, on the contrary, alleged in the petition that the collision was "due solely to the negligence of the steamship *Alleghany* and those in charge of her" (Limitation Record, page 3); and expressly stated that "the petitioner desires to contest its liability as owner of the steamship *Pomaron* for the loss, destruction, damage and injury occasioned or incurred by the collision with the said steamship *Alleghany* (independently of the limitation of liability hereinafter claimed)" (Limitation Record, page 5).

(III) No appraisal of the petitioner's interest in the steamer *Pomaron* or her pending freight was actually had; but, on the contrary, the claim-

ants accepted, as a part of the compromise, the values placed upon these interests by the petitioner's own agent, Millican. (Limitation Record, pages 10-12, 179.)

(IV.) The amounts of the several claims were not fixed by a reference or by order of the Court, but were the subject of compromise and agreement among the various claimants. (Limitation Record, p. 186.)

(V) No evidence was taken in the limitation proceedings to establish either the value of the steamer *Pomaron,* or the absence of privity or knowledge on the part of the petitioner.

(VI) A number of the claimants in the limitation proceedings, who consented to the final decree, were not parties to the original proceedings wherein the steamer *Pomaron* had been found at fault; and they were in no way bound by such proceedings. (Compare list of libellants, on pages 160 to 162 of transcript of record in this case, with Commissioner's Report giving list of claimants, on pages 57 to 59 of Limitation Record annexed to Motion.)

(VII) The final decree in the limitation proceedings was entered on motion of the proctors for the petitioner, Furness, Withy & Company, Limited. (Limitation Record, p. 182.)

(VIII) The final decree in the limitation proceedings required the claimants to give a receipt expressly discharging not only the steamship *Pomaron* and the petitioner, Furness, Withy & Company, but also the charterers of the said steamer; and renouncing all rights which they might have against the said steamer "in any

Court of any country or jurisdiction." (Limitation Record, p. 184.)

(IX) The agreement embodied in the said final decree has been actually carried out and the money therein provided to be paid has been paid over to the various claimants or their proctors. (Limitation Record, pages 194 to 201.)

It would be difficult to frame a more solemn and binding agreement of settlement and compromise than that recited in the final decree in the limitation proceedings. If that agreement had been carried out among the parties without the entry of any judgment, it would scarcely be suggested that it could be reopened or set aside for any cause, short of fraud. As a matter of fact, the only reason for entering a judgment was to give the petitioner the benefit of an injunction against any further or other claims.

It has generally been supposed that the best method of putting a compromise into effect and making it absolutely final is to have judgment entered upon it pursuant to the agreement of the parties. It has never been suggested, so far as respondents' counsel are aware, that an agreement of settlement and compromise loses any of its binding force and effect because it is made the judgment of a Court of competent jurisdiction. It is submitted that no authority can be found for avoiding or vacating either the agreement of the parties to the limitation proceedings above mentioned, or the judgment entered pursuant thereto. On the contrary, there is abundant authority for the proposition that this agreement and judgment are final as to all the issues mentioned therein.

In the case of *Nashville, Chattanooga and St.*

Louis Railway Company v. *United States* (113 U. S. 261), this Court had before it a question very similar to the question presented on this motion. In that case a petition had been filed in the Court of Claims to recover compensation for carrying the United States mails during the Civil War. In that proceeding it appeared that in 1871 a bill in equity had been filed by the United States against the aforesaid railway company to enforce certain demands of the United States against said company. In the equity proceeding the railway company had not set up as a set-off or cross action any demand for the transportation of mails; nor was any such claim mentioned in the negotiations which led up to the entry of the final decree. The equity proceedings were compromised and a final decree was entered by consent of the parties which recited the compromise and related that it was entered

> "in consideration of the settlement, satisfaction and discharge of all mutual claims and accounts between the parties as they existed on the first day of June, 1871."

In view of this decree, the Court of Claims dismissed the petition and an appeal was taken to this Court. The judgment of the Court of Claims was affirmed. Mr. Justice Gray, in delivering the opinion of this Court said:

> "But the insurmountable difficulty is, that the former decree appears upon its face to have been rendered by consent of the parties, and could not therefore be reversed, even on appeal. Courts of chancery generally hold that from a decree by consent no appeal lies. 2 Dan. Ch. Pr. ch. 32, sec. 1; French *v.* Shotwell, 5 Johns, Ch. 555; Win-

> chester *v.* Winchester, 121 Mass., 127. Although that rule has not prevailed in this court under the terms of the Acts of Congress regulating its appellate jurisdiction, yet a decree, which appears by the record to have been rendered by consent, is always affirmed, without considering the merits of the cause. A *fortiori,* neither party can deny its effect as a bar of a subsequent suit on any claim included in the decree."
>
> * * *

It is believed that the decision in that case is conclusive on the issue presented by this motion.

Many authorities may be cited to the same effect.

In *Clark* v. *Charles,* (55 Nebraska, 202), an action was brought to quiet title to certain real estate. A decree was entered which recited that it was entered in accordance with the stipulation and agreement of all parties to the action. Motions were later made to modify the decree and these motions were sustained by the trial court. This decision was reversed by the Supreme Court of Nebraska, which said:

> "The record before us will not sustain the finding that this decree was procured by fraud practiced by any one, nor that the decree is the result of a mistake, neglect, or omission of the clerk of the court."

It was argued that the decree was void because not warranted by the pleadings filed, but the Supreme Court said:

> "We think the answer to this argument is that this decree does not depend for its support entirely upon the pleadings filed in the Clark-Charles suit, but is the result of the

solemn agreement and stipulation of the parties in open court."

In *Fletcher* v. *Holmes* (25 Ind. 458), the Supreme Court of Indiana had to determine the validity of a judgment rendered in foreclosure proceedings. The judgment in question provided that if the proceeds of the mortgaged property were insufficient to pay the amount of the debt secured by the mortgage, the amount remaining unpaid should be collected out of the other property of the mortgagor. It was conceded that the personal judgment was unwarranted by the pleadings and, indeed, by the facts, as the mortgagor had not agreed to pay the money secured by the mortgage; but the judgment was nevertheless upheld on the ground that it was rendered by consent. The Court said:

"We can conceive of no reason why a judgment entered by agreement, by a court of general jurisdiction, having power in a proper case to render such a judgment, and having the parties before it, should not bind those by whose agreement it is entered, notwithstanding the pleadings would not, in a contested case, authorize such a judgment."

In *Indianapolis, etc. Railway Company* v. *Sands, et al,* (133 Ind. 433), the Supreme Court of Indiana laid down the same rule in the strongest terms, saying:

"The presumption is that the Court would have rendered a legal and valid judgment within the issues in the case; but here is a case presented where it is shown that the court yielded to the request of the parties and rendered such a judgment in manner and form as the parties agreed to, and now one of them is asking to be relieved from an error

which it made in its agreement and induced the court to acquiesce in".

In the case of *Walsh* v. *Walsh* (116 Mass. 377), the Supreme Judicial Court of Massachusetts said:

> "If the court does pronounce a decree against an infant by consent, and without inquiry whether it will be for his benefit, he is as much bound by the decree as if there had been a reference to a master and a report by him that it was for the benefit of the infant. Wall v. Bushby, 1 Bro. Ch. 484. 1 Dan. Ch. Pr. 164. The case falls within the general rule that a decree made by consent of counsel, without fraud or collusion, cannot be set aside by a rehearing, appeal or review. Webb v. Webb, 3 Swanst. 658. Harrison v. Rumsey, 2 Ves. Sen. 488. Bradish v. Gee, Ambl. 229; S. C. 1 Keny. 73. Downing v. Cage, 1 Eq. Cas. Ab. 165. Toder v. Sansam, 1 Bro. P. C. (2d ed.) 468. French v. Shotwell, 5 Johns. Ch. 555".

In *Prince* v. *McLemore* (108 Va. 269), the Supreme Court of Virginia said:

> "So it is said in Daniels' Chancery Prac. (4th ed.) at p. 973, 'a decree or order, made by consent of the counsel for the parties, cannot be set aside, either by re-hearing or appeal, or by bill of review, unless, by clerical error, anything has been inserted in the order, as by consent, to which the party had not consented; in which case a bill of review might lie. If, however, the decree has been obtained by fraud, relief may be had against it by original bill'. And this we understand to be the accepted doctrine upon the subject."

In the case of *Adler, et al,* v. *Van Kirk, etc.* (114 Ala., 551), the Supreme Court of Alabama said:

> "The fact that the decree in the foreclosure suit was rendered by consent of parties does not, therefore, detract from its dignity, or lessen its conclusiveness, as an adjudication between the parties. Not only is such its effect, but its consent is a waiver of error, precluding a review of the decree upon appeal, and, as a general rule, upon a bill of review.—Thompson *v.* Maxwell, 95 U. S., 391; Nashville, etc., R. R. Co. *v.* United States, 113 U. S., 266; 2 Dan. Ch. Pl. & Pr. (5th Am. ed.), p. 1576; Dunman *v.* Hartwell, 60 Am., Dec., 176; Curry *v.* Peebles, 83 Ala., 227."

In *United States Const. Co.* v. *Armour Packing Co., et al.* (35 Okla., 177), the Supreme Court of Oklahoma sustained the decision of the lower court in denying a motion to set aside a judgment entered by consent, saying:

> "The judgment in this case was the final ascertainment of the rights by consent of the parties to the suit, and cannot be changed by any subsequent order of the court without like consent." (Citing cases.)

In *Knobloch* v. *Mueller* (123 Ill., 554), the Supreme Court of Illinois said:

> "Decrees of courts of chancery, in respect of matters within their jurisdiction, are as binding and conclusive upon the parties and their privies as are judgments at law; and a decree by consent, in an amicable suit, has been held to have an additional claim to be

considered final. (Alleson *v.* Stark, 9 A. & E., 225.) Decrees so entered by consent cannot be reversed, set aside or impeached by bill of review or bill in the nature of a bill of review, except for fraud, unless it be shown that the consent was not, in fact, given, or something was inserted as by consent that was not consented to." (Citing numerous cases.)

In *Morris* v. *Peyton* (29 West Va., 201), the Supreme Court of Appeals of West Virginia had occasion to consider the effect of a consent-decree. In the course of its opinion the court said of the decree before it:

"Treating it as a consent-decree what control over it had the court below or has this Court?

"First—As such decree is not the judgment of the court upon the merits of the case but the act of the parties to the suit, it is obvious, that it cannot be modified, set aside or annulled by any order in the cause made by the court below without the consent of all the parties to the cause, unless set aside during the same term of the court, which would leave matters in the same condition as if it had never been entered. Nor can it be appealed from, nor modified by this Court, unless perhaps, it should be so entirely foreign to the matters in controversy in the cause, that for this or some other reason the court below had no jurisdiction or authority to enter any such decree by consent or otherwise. (Manion *v.* Fahy, 11 W. Va., 482, pt. 2 of Syll.) As shown in that case, it makes no difference, that such consent-decree was procured by

> fraud; or that through a mistake of the parties the decree as entered was different from what they intended it to be. In such case the party injured by such fraud or mistake can have such consent-decree set aside or modified by an original bill; but it can never be set aside by any order of the court in the cause after the end of the term, in which it was entered; nor can it *during the term or afterwards* be modified except by consent."

In Freeman on Judgments (4th ed., Sec. 330), the rule is stated as follows:

> "Irrespective of its effect as *res judicata,* a judgment by consent is regarded as in the nature of a contract or binding obligation between the parties thereto, which neither, in the absence of fraud or mistake, has the right to set aside or disregard, and which as against each is a waiver of errors or irregularities; and when such consent judgment embraces matters or extends to relief not involved within nor responsive to the issues in the case, it, with respect to such matters and relief, no doubt partakes more of the character of a voluntary agreement between the parties than of a judgment of the court determining a controversy between real litigants."

In the foregoing discussion no distinction has been made between cases in which judgments were entered merely on consent, and cases where the judgment purports on its face to be entered pursuant to an agreement of compromise and settlement. It is submitted, however, that there is a real and vital distinction between the two classes of cases.

Where a judgment has been entered on the

mere consent of a defendant, the judgment remains the act of the Court and, during the term, the judgment may perhaps be regarded as within the control of the Court and subject to be vacated or set aside, upon proof that the consent was based upon fraud or mistake.

Even in such a case, however, it is obvious that the mistake must relate to something other than the legal rights of the parties in the litigation terminated by the judgment. If this were not so, there would be no element of finality in a judgment by consent, as either party, upon changing his mind as to the merits of his claim or defense, could always ask the Court to set the judgment aside and determine the actual rights of the parties.

The purpose of settlement is to avoid or terminate litigation, and after actions are finally compromised neither party is at liberty to withdraw from the compromise merely because he has come to the conclusion that his chances of success were better than he had previously supposed.

A judgment by consent will not be set aside on the ground that the consent was given on the erroneous advice of counsel. See *Anderson* v. *Carr, et al.*, (7 N. Y. Supp. 281), a decision of the General Term of the Supreme Court of New York, Second Department, in which the opinion was written by Mr. Justice Edgar M. Cullen, later Chief Judge of the Court of Appeals of New York.

See also

Montgomery v. *Ellis* (6 Howard's Practice Reports [N. Y.], 326).

In the case of a judgment entered pursuant to an agreement of compromise, however, the situation is entirely different. In such a case

the rights of the parties are fixed primarily by their own agreement, and the decree of the court is merely the instrument whereby their agreement is carried into effect. Where a decree has been entered under such circumstances, and particularly where it has been finally carried out by the parties pursuant to their agreement, the Court, although it may theoretically have the power to set aside its decree, cannot set aside the agreement of the parties nor recall the acts done by the parties pursuant thereto. As hereinbefore suggested, an agreement of compromise duly made and carried out becomes none the less final and effective because a decree of the court was entered as a part of such agreement. In a case like the present, the settlement is not made pursuant to the decree; but the decree is made pursuant to the settlement. In effect, the parties have consented that the court may decree specific performance of their compromise agreement.

If there were any lack of finality in the decree itself, however, surely the payment and satisfaction of the various claims, pursuant to the agreement of the parties, should put an end to any further litigation in the premises. The situation in the present case is very closely analogous to the situation which was presented to this Court in the case of *Dakota County* v. *Glidden* (113 U. S. 222). In that case the statement of facts is as follows:

> "This was a motion to dismiss. The suit was on county bonds, issued in aid of a railroad. Judgment below for the plaintiff. The defendant brought a writ of error to reverse it. Subsequently to the judgment, the county settled with the plaintiff and other bondholders, by giving them new bonds

bearing a less rate of interest, and the old bonds, which were the cause of action in this suit, were surrendered and destroyed. These facts were brought before this court by affidavits and transcripts from the county records, accompanied by a motion to dismiss the writ of error."

In delivering the opinion of this Court, Mr. Justice Miller said (pages 224, 225):

"There can be no question that a debtor against whom a judgment for money is recovered may pay that judgment and bring a writ of error to reverse it, and if reversed can recover back his money. And a defendant in an action of ejectment may bring a writ of error, and failing to give a supersedeas bond, may submit to the judgment by giving possession of the land, which he can recover if he reverses the judgment by means of a writ of restitution. In both these cases the defendant has merely submitted to perform the judgment of the court, and has not thereby lost his right to seek a reversal of that judgment by writ of error or appeal. And so if, in the present case, the county had paid the judgment in money, or had levied a tax to raise the money or had, in any other way satisfied that judgment without changing the rights of the parties in any other respect, its right to prosecute this writ of error would have remained unaffected.

"But what was done was a very different thing from that.

"A new agreement, on sufficient consideration, was made, by which the judgment itself, the coupons on which it was recovered, and

the bonds of which these coupons were a part, were all surrendered and destroyed, and other bonds and other coupons were accepted in their place, payable at a more distant date and with a lower rate of interest, with the effect of extinguishing the judgment now sought to be reversed, so that the plaintiff in that judgment could not issue execution on it, though there is no supersedeas bond, to secure its payment.

"It is a valid compromise and settlement of a much larger claim, but it includes this judgment necessarily. It *extinguishes* the cause of action in this case. If valid, it is a bar to any prosecution of the suit in the Circuit Court, though we should reverse this judgment on the record as it stands for errors which may be found in it. To examine these errors and reverse the judgment is a fruitless proceeding because when the plaintiff has secured his object the relation of the parties is unchanged, and must stand or fall on the terms of the compromise.

"It is said that to recognize this compromise and grant this motion is to assume original instead of appellate jurisdiction.

"But this court is compelled, as all courts are, to receive evidence *dehors* the record affecting their proceeding in a case before them on error or appeal."

The rule deducible from all the authorities appears to be that the test of the right to restitution is whether the payment was made by the defendant *in invitum*, under compulsion of the process of the Court; or was made voluntarily. Voluntary payments, particularly if made for good consideration, cannot be recovered back,

even though it later appear that the defendant was not legally bound to make any payment.

In the present case, the settlement of the limitation proceedings had all of the elements of a mutual compromise. The petitioner was not compelled to establish the value of its interest in the *Pomaron* and her pending freight; but, as a part of the agreement, was allowed to surrender the amounts which had been fixed by its own employees.

The petitioner was not forced to establish its right to a limitation (which had not been conceded by most of the claimants) but was allowed to limit its liability by consent; and the libellants in the previous proceedings voluntarily accepted much less than the amounts of their respective judgments.

The claimants discharged the petitioner not only from claims which they had under the laws of the United States, but also from all claims which they might have put forward in other countries—notably in England, the country of petitioner's domicile.

Moreover, there was a real compromise among the claimants themselves. The fixing of their claims before a Commissioner would have been a long, tedious and expensive process. Accordingly, mutual concessions were made and the fund available was distributed in accordance with the agreement of the various claimants.

Furthermore, the result of the compromise was to preclude the participation of any other claimants (of whom there may be many) who had not filed claims in the limitation proceedings and who were, therefore, barred by the final decree.

In the light of the foregoing considerations, it seems clear that the rights which accrued under

the compromise in the limitation proceedings can never be re-adjusted in any other proceeding; and that Judge Hand's order continuing the limitation proceedings was an order which he had no jurisdiction to make on the facts presented to him. It is submitted that no court can set aside or modify the decree in the limitation proceedings whereby all of the parties themselves voluntarily adjusted their respective rights and claims and finally (as all of them believed and desired) terminated, as among themselves, all issues arising out of the collision between the *Alleghany* and the *Pomaron*.

Accordingly, even if this Court should reverse the decree of the Circuit Court of Appeals for the Second Circuit, the final decree in the limitation proceedings could not properly be vacated or set aside; and even if this decree were vacated there is no theory upon which the petitioner could recover back the money which it has voluntarily paid into court and which, on the petitioner's own motion, the court has distributed to the various claimants in the limitation proceedings. It follows that the questions now presented to this Court on *certiorari* are moot questions, which counsel should not be called upon to argue, and which this Court, under its well settled practice, will not decide.

Respectfully submitted,

J. Parker Kirlin,
Lawrence Kneeland,
D. Roger Englar,
John M. Woolsey,
Of counsel for various respondents in the above entitled proceeding.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1916

No. 106

FURNESS, WITHY & COMPANY, LIMITED
(Respondent-Appellant)
Petitioner

vs.

YANG-TSZE INSURANCE ASSOCIATION, LIMITED, *et al.*
(Libellants-Appellees)
Respondents

Affidavit in opposition to motion to dismiss or affirm

SOUTHERN DISTRICT OF NEW YORK, City and County of New York, } ss.:

CHARLES C. BURLINGHAM, being duly sworn, says:

I am a member of the firm of Burlingham, Montgomery & Beecher, proctors for the petitioner herein, and am familiar with this litigation in all its phases. I have read the affidavit of Mr. John M. Woolsey, verified December 9, 1916, on which the motion to dismiss or affirm is based. Mr. Woolsey's affidavit gives the impression that the decree entered in the limitation proceeding April 22, 1915, was based on a compromise and settlement of undetermined issues. This is not the fact. There were no issues between the petitioner and these respond-

ents in the limitation proceeding, and the payment made under the decree of April 22, 1915, was in reality made under the compulsion of the decisions of the District Court and the Circuit Court of Appeals in the collision case, as appears from the facts and circumstances hereinafter set forth. The following is a chronological statement of the history of the litigation:

February 27, 1912 -April 23, 1913,	Fifteen libels in *personam* filed in the District Court for the Southern District of New York against Furness, Withy & Co., Ltd., owner of S. S. *Pomaron* claiming in all about $220,000.
February 29, 1912,	Stipulation for value of National Surety Company in the sum of $70,500., filed by Furness, Withy & Co., Ltd., as security for claims under libels then filed and claims of "all other persons having any claims" against the steamship *Pomaron* and her owners.
March 26, 1913,	Decision rendered by District Court in favor of libellants and against petitioner.
June 13, 1913,	Decree of District Court entered for $172,089.21, with interest and costs.
June 10, 1914,	Decision of District Court affirmed by Circuit Court of Appeals.
October 2, 1914,	Decree entered in District Court on mandate of Circuit Court of Appeals.
October 5, 1914,	Petition for limitation of liability filed by Furness, Withy & Co., Ltd.
October 8, 1914,	Order of provisional valuation entered fixing value of S. S. *Pomaron* and pending freight at $70,419.14.
January 18, 1915,	Monition in limitation proceeding returned.

April 12, 1915,	First application made by Furness, Withy & Co., Ltd., for writ of *certiorari*.
April 19, 1915,	*Certiorari* denied, 238 U. S. 625.
April 22, 1915,	Final decree entered in limitation proceeding.
May 10, 1915,	*Certiorari* to Circuit Court of Appeals for 9th Circuit in suit of *Olaf Lie* v. *San Francisco & Portland S. S. Co.* granted.
June 1, 1915,	Second application made by Furness, Withy & Co., Ltd., for writ of *certiorari*.
June 14, 1915,	*Certiorari* granted, 238 U. S. 634.
July 1, 1915,	Motion made in District Court by Furness, Withy & Co., Ltd., within term at which decree of April 22, 1915, was entered, to open, vacate, amend and correct said decree, and to extend term.
July 3, 1915,	Order entered that no decision be made on merits of motion until after decision of this Court on writ of *certiorari* and extending term and continuing motion.

The denial of the petitioner's application for a writ of *certiorari* seemed definitely to foreclose further efforts to avoid the liability which had been adjudged against it by the District Court and the Circuit Court of Appeals in the collision case and the limitation decree was entered and the limitation fund paid into Court for that reason. The granting of the writ of *certiorari* in *Olaf Lie* v. *San Francisco & Portland Steamship Co.*, No. 110 of the present term, a case involving somewhat the same question as that decided adversely to the petitioner in the case at bar, justified a second application for the writ of *certiorari* by this petitioner. In its second application this petitioner stated that it had instituted

proceedings for limitation of liability which had been prosecuted to a decree since the first application was denied, under which payments had been made under compulsion.

1. The original fifteen libels were filed *in personam* against Furness, Withy & Company, Ltd., with clause of foreign attachment and laid the damages in the aggregate sum of about $220,000. From the beginning it was understood by all parties that the liability of the petitioner should not exceed the value of the *Pomaron* and her pending freight, and by consent a stipulation for value in the sum of $70,500. was filed by the petitioner in the collision case on February 29, 1912. This stipulation was, in terms, given as security for [illegible] laims of the libellants who had already filed libe[illegible]laims of "all other persons having any claim[illegible] e steamship *Pomaron* and her owners, a[illegible]d in writing by the firms of which Messrs. [illegible] and Woolsey, Mr. Kneeland and Mr. Englar were at [illegible]are members. The stipulation recited in part:

"WHEREAS the respondent claims that its liability is limited to the value of its interest in the steamship *Pomaron* at the termination of the voyage on which she was engaged at the time of the collision and in the freight of said steamship *Pomaron* then pending, and wishes to give security for the claims of the libellants above named and all other persons having any claims against the steamship *Pomaron* and her owners up to the amount of its said interest; and

WHEREAS the respondent claims that the value of its interest in said steamship *Pomaron* at the termination of said voyage amounted to the sum of $64,389.77 and the freight to the sum of $6,029.37, making in all the sum of $70,419.14, and the libellants claim that the value of said interest is a larger amount; and

WHEREAS the issuing of process of foreign attachment has been waived in consideration of the respondent appearing herein and filing stipulation for costs and value,

the latter in the sum of $70,500., with interest from February 4, 1912, subject to the right of the libellants to apply to this Court for an appraisal of the value of the respondent's interest in said steamship *Pomaron* and her pending freight, or for an increase in the security for their claims, and the respondent agreeing to provide additional security if it shall be found by this Court that the value of the respondent's said interest exceeds said sum of $70,500. * * *."

The purpose of this arrangement was to avoid the expense incident to limitation of liability proceedings. At the time it was thought that all the claims were known and were represented by a few proctors well known to each other, and it was understood that if the petitioner was held liable, the several libellants would accept their *pro rata* shares of the value of the *Pomaron* and her pending freight.

2. After the petitioner had been held liable in the District Court and a decree had been entered consolidating the fifteen suits and awarding the libellants $172,029.81 (Collision Record, pp. 160–164) other claims theretofore unknown to the petitioner, amounting in the aggregate to about $40,000, were presented, and, although these were for the most part represented by the proctors who had filed the original libels, there were certain outstanding claims not so represented. Thereupon it became apparent that unless the decree of the District Court was reversed and the petitioner exonerated, it would be necessary to begin a proceeding under the Limited Liability Act and thus bring all persons having claims into concourse. An appeal was first taken by the petitioner to the Circuit Court of Appeals for the Second Circuit, where, on June 10, 1914, the decision of the District Court was affirmed. The decree of the District Court on the mandate of the Circuit Court of Appeals was entered October 2, 1914.

3. October 5, 1914, the petitioner filed its petition for limitation of liability in the District Court for the Southern District of New York. Pursuant to the usual monition, all persons claiming damages by reason of the collision were cited to appear and prove their claims January 18, 1915, and were also cited to appear and answer the petition at the same time; otherwise, they were to be defaulted and barred from participation in the stipulation mentioned in the next paragraph of this affidavit (*200-201).

4. An order of appraisal was entered October 8, 1914, fixing the value of the *Pomaron* and her pending freight at $70,419.14, and directing the petitioner to file a stipulation for value in the sum of $70,500., which was done (66-67). This stipulation was for exactly the same amount as the stipulation filed in the collision case. This order for appraisal provided further that the provisional valuation of $70,419.14 should stand as the appraisal by the District Court of the amount or value of the petitioner's interest in the *Pomaron* and her pending freight unless exceptions should be filed on or before January 23, 1915 (67-68).

The petition for limitation of liability alleged in article sixth that the petitioner's interest in the *Pomaron* and her pending freight was $70,419.14 (17-18). For any claimant to be in a position to attack this provisional valuation it was necessary, therefore, both to deny the allegation of the sixth article of the petition that the value was $70,419.14, and also to except to the order of October 8, 1914, fixing the valuation at this amount.

5. The libellants in the fifteen libels in the collision case filed claims in the limitation proceeding, based wholly on the judgments they had secured. The

* The references are to folios of the Limitation Record unless otherwise stated.

amounts of the respective judgments as they appear in the decree in the collision case entered June 13, 1913 (Collision Record, pp. 162–164), are identical with the amounts of the claims filed in the limitation proceeding as reported by the Commissioner, and as recited in the decree in the limitation proceeding (228–232, 719–724), except as the claims were increased by separate items representing interest from June 13, 1913, or costs taxed on the decree on mandate of the Circuit Court of Appeals entered in the District Court October 2, 1914. The Commissioner's report shows on its face that the claims were based on the judgments secured in the collision case, and the decree in the limitation proceeding refers specifically to the Commissioner's report (706–707). The judgments in the collision case and the claims of these respondents in the limitation proceedings (except interest or costs) may be detailed as follows:

	Judgment in Collision Case	Claim in Limitation Proceeding
1. Yang-Tsze Insurance Assn Ltd. *et al*.....	$19,737.59 (Record, p. 162)	$19,737.59 (Record, fol. 722)
2. Nord-Deutsche Ins. Co. *et al*.....	14,252.02 " " "	14,252.02 " " 720
3. Federal Ins. Co. *et al.*	24,035.04 " " "	24,035.04 " " 723
4. Walter Oloffson *et al.*	2,039.97 " " "	2,039.97 " " 720
5. M. H. Silvera.....	2,135.59 " " "	2,135.59 " " 720
6. Hazan & Co.....	1,247.35 " " 163	1,247.35 " " 722
7. Boston Ins. Co.....	9,768.93 " " "	9,768.93 " " 722
8. Walter D. Despard..	14,831.24 " " "	14,831.24 " " 724
9. Eugene J. F. Coleman.....	5,706.27 " " "	5,706.27 " " 720
10. Marshall K. Weidensaul.....	1,118.27 " " "	1,118.27 " " 721
11. Francis W. Van Praag.....	1,115.57 " " "	1,115.57 " " 721
12. Orton G. Orr.....	28,250.85 " " "	28,250.85 " " 721
13. Laura Moore.....	11,977.41 " " "	11,977.41 " " 720
14. Louis Bertschman..	30,815.22 " " "	30,815.22 " " 722
15. United States of America.....	4,998.49 " " "	4,998.49 " " 723

Thus there was no issue between the petitioner and these respondents with respect to the amounts at which these claims should be allowed. The amounts thereof as well as the question of liability therefor were *res adjudicata.*

Also, as the total amount of these claims, namely, $172,029.81, far exceeded the limitation value of the *Pomaron* and her pending freight, namely, $70,419.14, the petitioner had no interest whatever either in the aggregate amount or in the amount of the individual claims.

6. There was no issue as to the amount of the fund. A stipulation for $70,500 had been given in the collision case and approved by all the parties thereto, and a bond for the same amount was given in the limitation proceedings. At the trial of the collision case it was stipulated that the value of the ship, meaning the value of the petitioner's interest for limitation purposes, was $70,500 (Collision Record, p. 66). No exceptions were filed to the provisional valuation of $70,419.14 contained in the order of October 8, 1914, except by Mr. Kneeland and Mr. Kirlin.

Mr. Kneeland's exception on behalf of the Federal Insurance Company *et al.* (167-168) went only to the point that the stipulation for value should have included $9,122.83 received by the petitioner from the *Alleghany's* owners in part payment of the *Pomaron's* damages. The petitioner agreed even before the limitation proceeding was begun to turn this sum over to the claimants, if it should ultimately be held liable, and on or about September 10, 1914, my office wrote to Mr. Kneeland that this sum would be added to the fund. It was so added later and paid into Court in addition to the amount of the stipulation.

Mr. Kneeland's answer to the sixth article of the peti-

tion, on behalf of the Federal Insurance Company *et al.* (141–144), so far as it denied that the value of the *Pomaron* and her pending freight was only $70,419.14, merely objected that the aforesaid sum of $9,122.83 received on account of the *Pomaron's* damages should be added to the value, and except for this did not deny that the value was $70,419.14.

Mr. Kirlin's exception (173–176) on behalf of Yang-Tsze Insurance Assn., Ltd. *et al.* to the provisional valuation of $70,419.14 in the order for appraisal of October 8, 1914, was wholly indefinite and stated no ground of objection. Whatever point there might otherwise have been in the exception, it had no effect whatever because Mr. Kirlin filed no answer to the petition. The sixth article of the petition (17–18) set forth in detail the value of the *Pomaron* and her pending freight and stated the same at $70,419.14. By failure to deny or answer the allegations of this article Mr. Kirlin admitted the same on behalf of his clients.

The answer to the petition filed by Mr. Englar's firm on behalf of Eugene J. F. Coleman (589–602) in article sixth (594) denied knowledge or information as to article sixth of the petition. Mr. Englar, however, filed no exception to the order of appraisal entered October 8, 1914, and by the terms of this order (68) the valuation of $70,419.14 therefore stood as to Mr. Englar's client notwithstanding the allegations of his answer.

7. Further, there was no issue in the limitation proceeding as to the petitioner not being in privity with the disaster. Any issue as to liability had already been determined against the petitioner in the collision case. Most of the claimants filed no answers to the petition. As to them its allegations were therefore to be taken as

confessed and admitted. Of the claimants who now make this motion only the Federal Insurance Company *et el.*, represented by Mr. Kneeland, and Eugene J. F. Coleman, represented by Mr. Englar, filed answers (137–149, 589–602).

Both these answers alleged that the liability of the petitioner was *res adjudicata* by reason of the decision in the collision case (148–9, 600), and this was the fact. They both admitted that the petitioner was without privity as alleged in the fourth article of the petition (10–11). Mr. Kneeland's answer admitted this by express recital in article third (139). Mr. Englar's answer in article fourth (593–594) admitted the allegation of article fourth of the petition with respect to the petitioner's freedom from privity by failing to deny it.

The prayers of Mr. Kneeland's answer (132–133) and of Mr. Englar's answer (601) are both to the effect that the petition be denied so far as it prays that the petitioner be adjudged not liable to any extent. They do not pray that limitation of liability be denied. This, of course, constitutes an admission that the petitioner was entitled to limit its liability, which had, as I have said, been conceded from the beginning.

8. On the face of the limitation proceedings, therefore, without proof of any kind, the petitioner had the right to a limitation of its liability and to the entry of a decree which would give it exactly the relief that the decree entered April 22, 1915, did give. Instead of that decree being based on compromise and mutual concessions as between the petitioner and the respondents, it is apparent that it was merely one form of giving the petitioner the relief to which it was indisputably entitled under the statute and which had been conceded by all parties

from the beginning of the litigation in February, 1912. There were no issues left to compromise, the claimants gave up nothing and sustained no prejudice whatever. So far as it is possible to say correctly that there was a compromise, it was only with respect to the steps necessary to have a decree entered in view of the proceedings and results of the collision case, and did not go to the question of liability between the parties. That question had already been determined against the petitioner by the courts below. In paying the limitation fund into court pursuant to the decree of April 22, 1915, the petitioner was in exactly the same position as if it had paid money under any other decree. In so doing it yielded to the order of the court based upon a determination of liability, and the payment was made under compulsion. Even if there had been any questions left to compromise they could only have been with respect to limitation of or exoneration from liability already adjudged and not with respect to the liability itself. The recital of compromise and settlement in the decree cannot affect these facts.

9. The question now raised by the motion to dismiss or affirm has already been passed on by this Court in favor of the petitioner. In our second application for the writ of *certiorari* we stated:

"Subsequent to the decision of the Circuit Court of Appeals your petitioner instituted proceedings for limitation of liability, which, after the denial by this Court of the original petition, were prosecuted to a decree under which payments were made to the respondents by the Clerk of the District Court. As these payments were made under compulsion they would be recoverable by your petitioner in the event that this court should reverse the decision of the Circuit Court of Appeals."

Mr. Kirlin opposed the granting of the writ on the ground that the case had been settled and closed and on

pages 3–5 of his memorandum in opposition set forth various facts with respect to the entry of the limitation decree of April 22, 1915. As the facts were thus presented to this Court and the writ of *certiorari* was granted nevertheless, it is respectfully submitted that the questions sought to be raised by the motion to dismiss or affirm are no longer open to the respondents.

10. After the writ of *certiorari* was granted, and on July 1, 1915, within the term at which the limitation decree of April 22, 1915, was entered, the petitioner moved before the District Court for the Southern District of New York that the decree of April 22, 1915, be opened and vacated, amended and corrected and that the limitation proceeding be continued until this Court should render its decision on the writ of *certiorari*. General Rule 5 of said District Court provides:

"For the purpose of making and filing bills of exceptions and making any and all motions necessary to be made within the term at which any judgment or decree is entered, each term of this Court shall be, and hereby is, extended so as to comprise a period of three calendar months beginning on the first Tuesday of the month in which verdict is rendered, or judgment or decree entered."

This motion was opposed by those claimants on whose behalf this motion to dismiss or affirm is made.

The District Court ordered July 3, 1915 (809–817) that no decision be made on the merits of the motion until this Court should have rendered its decision on the writ of *certiorari*, and that the term of the District Court for all purposes of the relief sought by the petitioner be extended until the decision of this Court and until appropriate action thereunder by the Circuit Court of Appeals and the

District Court. The order also provided that the motion be continued until the further order of the District Court.

Until this Court shall reverse the determination of the Circuit Court of Appeals and a proper decree is entered in the District Court, there can be no reason for disturbing the limitation decree of April 22, 1915, because it is based on the liability fixed by a decree which this Court is about to review. If this Court reverses the decree in the collision case, then the District Court will have a right to act and the petitioner can take such proceedings as may be necessary to open, vacate, amend and correct the decree in the limitation proceeding and secure restitution of the moneys which have been paid pursuant to the erroneous decrees adjudging liability.

It is therefore respectfully submitted that this is not a moot case, and that the motion to dismiss or affirm should be denied.

CHARLES C. BURLINGHAM

Sworn to before me this 16th day of December, 1916.

ROSCOE H. HUPPER,
Notary Public,
New York Co., No. 302.

[SEAL]

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1916

No. 106

FURNESS, WITHY & COMPANY, LIMITED
(Respondent-Appellant)
Petitioner

vs.

YANG-TSZE INSURANCE ASSOCIATION,
LIMITED, *et al.*
(Libellants-Appellees)
Respondents

BRIEF FOR PETITIONER IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

The contention of the respondents who make this motion amounts to this: That because the petitioner on April 22, 1915, after this Court had denied its first application for *certiorari* April 19, 1915, paid, pursuant to a decree entered by consent in the limitation proceeding, the amount to which it was indisputably and concededly entitled to limit its liability as adjudged in this suit, the case has become moot and the petitioner cannot be heard under the writ of *certiorari* granted June 14, 1915, on its second application, to dispute that it was rightly held liable by the decree here under review.

In other words, say these respondents, the petitioner, by availing itself of the benefit of the statutes limiting liability, before its liability was finally determined, has barred itself from further contesting whether it was liable at all.

So extraordinary a proposition seriously advanced calls for the closest scrutiny. More particularly is this so in this case than in any other which has come to our attention, because the contention made is in reality based on and designed to take advantage of this Court's decision of April 19, 1915, not to grant the writ of *certiorari*.

The petitioner's action in paying the limitation fund pursuant to the consent decree entered April 22, 1915, was taken because, *certiorari* having been denied, there was then no opportunity to contest further, either in the collision case or in the limitation proceeding, the question of the liability which had been adjudged against the petitioner. We say this to the end that if this Court, notwithstanding the proceedings already taken by the petitioner in the District Court within the term at which the decree of April 22, 1915, was entered, to open, vacate, amend and correct it, should, nevertheless, by any chance perceive in that decree any obstacle to the prosecution of this writ or to the attainment by the petitioner of its rights in case the decision of the Circuit Court of Appeals is reversed, all applicable presumptions may be indulged in the petitioner's favor.

We direct the Court's attention at the outset to the fact that on its second application for *certiorari* the petitioner specifically stated at page 4 of its petition that, subsequent to the denial of its first application, the limitation proceeding had been prosecuted to a decree under which payments had been made. Mr. Kirlin opposed

the second application on the ground that the case was settled and closed, as appears from pages 3–5 of his memorandum in opposition to the petition. As the substantial facts were all before this Court when the second application was granted, we submit that the questions sought to be raised by this motion are no longer open to the respondents.

Another consideration of great importance with respect to whether this motion can be prosecuted is that the limitation decree of April 22, 1915, is still subject to the action of the District Court. Soon after the writ of *certiorari* was granted, and within the term at which that decree was entered, the petitioner moved before the District Court to open, vacate, amend and correct it, and to extend the term. The District Court by an order entered July 3, 1915, extended its term and continued the motion, so that appropriate action may be taken by that Court in the event that this Court shall reverse the decision of the Circuit Court of Appeals. Until that decision is reversed there is no basis for action by the District Court. If the decision of the Circuit Court of Appeals is not reversed no action will ever be necessary, for in the present status of affairs, *i. e.*, with liability adjudged against the petitioner, the decree expresses the rights of the parties. The action to be taken by the District Court with respect to the decree may depend on matters not in the record, as is shown in the affidavit of Mr. Burlingham submitted herewith. It is not improbable that testimony will be taken before the District Court. The petitioner's motion in the District Court to open the decree was opposed by, and undoubtedly will still be opposed by, these respondents. It must now be presumed, we submit, that the District Court will make a proper disposition of the

motion when the matter is ready to be proceeded with there.

The matter having been presented to the District Court within the term at which the decree was entered, there can be no doubt that it has full power to open, vacate, amend and correct the decree, and to take whatever steps may be necessary to accomplish justice. *Ex Parte Lange*, 18 Wall. 163, 167; *Memphis* v. *Brown*, 94 U. S. 715; *Barrell* v. *Tilton*, 119 U. S. 637. That the decree is such as can be opened, vacated, amended or corrected is also beyond doubt. See *Kelley* v. *Milan*, 127 U. S. 139; *Mayor, etc., of Vicksburg* v. *Henson*, 231 U. S. 259; *Pacific Railroad* v. *Ketchum*, 101 U. S. 289; *Last Chance Mining Co.* v. *Tyler Mining Co.*, 157 U. S. 683, 692. Neither is it to be doubted that the District Court will take appropriate steps, as courts of Admiralty act upon equitable principles. See *Erie R. R. Co.* v. *Erie Transpt. Co.*, 204 U. S. 220; Benedict's Admiralty, 4th Ed., Secs. 261, 291, and cases there cited.

Unless on the papers now before this Court it can be held that by no possibility could the petitioner ever secure appropriate relief in the District Court in the event that this Court shall reverse the decision of the Circuit Court of Appeals, then it cannot be said that this is a moot case, and the present motion must fail.

Coming now to discuss the respondent's contentions that this is a moot case, we observe preliminarily that in the first paragraph of this memorandum we have stated their contentions according to their legal effect in view of the steps taken both in the collision case and in the limitation proceeding. We suppose these respondents would not for a moment contend that if the full amount of the decree in the collision case had been paid the case would

thereby have become moot. We say this the more confidently because they have cited *Dakota County* v. *Glidden*, 113 U. S. 222, 224, where Mr. Justice Miller said:

"There can be no question that the debtor against whom a judgment for money is recovered may pay that judgment and bring a writ of error to reverse it, and if reversed can recover back his money."

Since the greater includes the less, we suppose also that the respondents would not contend that payment of only part of the decree in the collision case made that case moot, and would still admit that the money paid could be recovered back if the decree were reversed.

Further, we think by parity of reasoning that it is not unfair to impute to these respondents an admission that if the liability had been adjudged in the limitation proceeding, as under the statutes and under Rules 54 and 56 of this Court in Admiralty might have been done, then the petitioner could recover back, on reversal, whatever amount might have been paid under the decree entered in the limitation proceeding, irrespective of whether that decree had limited liability or held the petitioner to full liability.

The position here is that these respondents have been paid in the limitation proceeding begun *after* the lower courts held the petitioner liable only part of their judgments secured in the collision case, being the exact amount to which the petitioner's liability would have been limited in a limitation proceeding which might have been begun *before* the collision case went to decree. Nevertheless the respondents contend that the case has become moot. Unless the *time* when a limitation proceeding is begun is the important factor—and not the *question involved*—their contention that the case is moot

is inconsistent with the proposition that moneys can be recovered back under the circumstances above stated.

The respondents contend that there has been a solemn settlement and compromise of the issues. What issues, we ask? Certainly not the issue of the petitioner's liability for the collision, for that was already *res adjudicata* by the decision in the collision case, now here for review. Their answers in the limitation proceeding alleged that the question of liability was *res adjudicata*. Their motion papers and brief will be searched in vain for any suggestion that the question of the petitioner's liability was compromised. The specific matters which they contend were compromised are stated on page 22 of their brief, in substance as follows:

(*a*) The matter of the value of the petitioner's interest in the *Pomaron* and her pending freight.

(*b*) The matter of the petitioner's right to limitation of liability.

(*c*) The discharge of the petitioner from all claims everywhere.

(*d*) Agreement between the various claimants as to their respective claims.

(*e*) Exclusion of other claimants who did not file claims.

The suggestion of a compromise with respect to (*a*) and (*b*) is wholly erroneous. These matters were not in a position for compromise. Either the allegations of the sixth article of the petition with respect to the value of the *Pomaron* and her pending freight were not answered and denied, or the provisional valuation in the order for appraisal entered October 8, 1914, was not excepted to.

Unless the sixth article of the petition should be denied, and this order of October 8, 1914, excepted to, the valuation of $70,419.14 stood. Most of the claimants did not answer the petition at all, and thus admitted all its allegations. None of the claimants who did answer denied the right to limit liability, which had, indeed, been conceded from the very beginning of the litigation. Thus no claimant was in a position to contest the entry of just such a decree as was entered.

The facts with respect to the total absence of issues are fully set forth in Mr. Burlingham's affidavit submitted herewith.

As to (*c*) and (*e*), these matters were not the subject of any compromise, but followed inevitably from the entry of the decree pursuant to the Limited Liability Statute and Rules.

As to (*d*), the claimants now before this Court made no compromise or concession whatever among themselves. Their claims in the limitation proceeding were based on the judgments secured in the collision case and were allowed at the full amount of such judgments. So far as these respondents may have made any concessions to other claimants not before this Court, the point is not material. Concessions made (if there were any such) between the claimants themselves had no bearing on the petitioner's rights, as the limitation fund was much less than the total liability adjudged in the collision case.

Thus it is seen that the supposed grounds of compromise are wholly unsubstantial.

The principal difficulty with the respondents' position is that they have disregarded the fact that the collision case and the limitation proceeding, so far as the question of liability was concerned, were not separate and unre-

lated proceedings. The determination of liability in the first was the basis for the application of limitation of liability in the second. The liability was *res adjudicata* in the limitation proceeding. The respondents themselves contended for this principle in such answers as were filed, and they have signally benefited by its application in that their judgments proved their claims. Having claimed on the judgments and secured their payments on that theory, the claimants now choose to contend that the payments were made by virtue of a compromise and not by virtue of the judgments. It would be absurd and unjust to sustain such a contention.

All the respondents' arguments are disposed of by the fact, which the recitals of the limitation decree of April 22, 1915, in no way affect, that the limitation fund was paid because the petitioner had been adjudged liable for that amount. That the petitioner was relieved by the limitation decree (under the limited liability act) from paying that part of the collision decree in excess of the value of the *Pomaron* and her pending freight has no bearing whatever. The petitioner was not relieved from paying this excess in consideration of its paying the limitation fund, but was so relieved by the statute unconditionally. If in the limitation proceeding there had remained any issues to be compromised, those issues would have been with respect to exoneration from liability for the excess of the collision decree over the limitation fund, and not with respect to liability for the amount of the limitation fund. This is borne out by those portions of the decree quoted at pages 4–8 of the respondents' brief. It seems too obvious for serious argument that settlement and compromise (if there had been any) with respect to *exoneration from* liability for part of the col-

lision decree could in no possible sense have affected that part of the decree for which the petitioner was still held liable. Of course, if there had been a settlement and compromise it would have rendered moot all questions with respect to *limitation of* liability.

In view of the state of the pleadings in the limitation proceeding, as well also in view of the proceedings already had in the collision case, the only issues to which the recital of compromise and settlement in the decree could have applied were those with respect to such steps as should be taken for the entry of the decree. If the petitioner and these respondents had proceeded to a trial of the limitation proceeding in the District Court that court would have been bound to decide, without testimony and without argument, that the petitioner was liable and was entitled to limit its liability to the exact amount to which it was limited by the limitation decree of April 22, 1915.

With respect to all the respondents in the collision decree now here for review, the decree in the limitation proceeding did nothing more than prescribe the manner in which satisfaction of the collision decree should be made. In conformity with the limitation statute, the decree in the limitation proceeding provided that the collision decree now under review should be satisfied by payment of less than its face amount. If it does more with respect to claimants who were not parties to the collision decree it may be that their rights will not be affected by a reversal of the decree, but those persons are not before this Court, and the possible effect of a reversal upon their rights need not now be considered.

Mr. Burlingham's affidavit clearly shows that there was in fact no compromise or settlement of any issue in

the limitation proceeding. Not only does it appear that no concessions of any kind were made by the respondents to the petitioner, but it is not even suggested by the respondents that any concessions of any kind were made to them by the petitioner. If there had been a compromise, it would have been one where, upon the respondents' own statement, but one party to it yielded anything. The actual fact is that there was no compromise. As Mr. Burlingham's affidavit states, all the parties to the decree now under review recognized from the very outset the petitioner's right to limit its liability, and the entire litigation was carried on with that understanding. The sole reason for the limitation proceeding was the discovery of claimants other than the parties to this litigation and who were not subject to the arrangement made in respect thereto, which was virtually for a limitation of liability by consent in case the courts should hold the petitioner liable.

At pages 8–10 of their brief the respondents have noted nine different circumstances in connection with the limitation proceeding which presumably they consider important. In view of the status of the limitation proceeding when the decree of April 22, 1915, was entered, and in the light of the foregoing considerations, we think it is clear that the circumstances mentioned are either erroneous or have no legal significance whatever. We make the following observations:

I. This is incorrect. The limitation decree of April 22, 1915, did refer to the previous proceedings in the District Court, in that the decree recited the Commissioner's report (706–710), which shows that the claims of the respondents who make this motion were based on judgments (225–232). The claims themselves filed with the

Commissioner's report show on their face that they were based on the judgments secured in the collision case (237-422).

The principal reason for the petition being filed was that there were other claimants who had not been parties to the collision case, and there was no reason why the petition should expressly refer to the previous proceedings in that case.

II. The petitioner could not be expected to admit liability in the limitation proceeding, notwithstanding that it had been held liable in the collision case. Such an admission might very well have made the case moot, cutting off the petitioner's right to apply for or prosecute the writ of *certiorari*.

III. The petitioner's interest in the *Pomaron* and her pending freight was appraised by the order for provisional valuation entered October 8, 1914. This valuation was also stated in article sixth of the petition. It was not so denied or excepted to as to raise any issue, and there was no compromise whatever with respect thereto.

IV. The respondents who make this motion made no compromise whatever with respect to their claims, but the same were allowed at the full amount of the judgments which they had secured in the collision case.

There was no issue as to the amounts of their several claims, these having been fixed by the collision decree, and there was, therefore, no occasion for a reference or for an order of the court. Even on the entry of the collision decree the amounts of the claims were fixed by consent, without prejudice to the petitioner's right to appeal.

V. The value of the *Pomaron* was not denied or excepted to in such a way as to raise any issue.

The absence of privity or knowledge on the part of the petitioner was not denied. The answers to the petition did not pray that limitation of liability be denied and the petitioner's right to limitation of liability had been conceded from the beginning of the litigation in February, 1912.

VI. It is not material to this motion to consider the position of any claimants in the limitation proceeding who were not parties to the collision case now under review.

VII. That the petitioner was seeking the aid of the limited liability act to fix the amount which it should pay to satisfy the decree in the collision suit, made it manifestly proper that the limitation decree of April 22, 1915, should be entered on the motion of the proctors for the petitioner.

VIII. The limited liability act limits the liability of the charterer under certain circumstances as well as that of the owner. After a decree has been entered limiting liability to certain claimants to a certain amount it is difficult to see how those claimants can have any rights remaining either in this country or any other. See *Norwich Co.* v. *Wright*, 13 Wall. 104; *Providence & New York S. S. Co.* v. *Hill Mf'g. Co.*, 109 U. S. 578; *The Scotland*, 105 U. S. 24; *Butler* v. *Boston S. S. Co.*, 130 U. S. 527; *Richardson* v. *Harmon*, 222 U. S. 96; *The San Pedro*, 223 U. S. 365. It is entirely competent for our courts to issue an injunction against proceedings in another country. See *French* v. *Hay*, 22 Wall. 250, 252–253; *Cole* v. *Cunning-*

ham, 133 U. S. 107; *Carron Iron Co.* v. *MacLaren*, 5 House of Lords Cases, 416, 439. The claimants did nothing with respect to exonerating the petitioner from liability in excess of the limitation fund that would not have been accomplished by the operation of the limited liability statute properly interpreted. If there are any errors in the limitation decree of April 22, 1915, they can readily be corrected by the District Court if the decree in the collision case is reversed by this Court.

IX. The fact that the money has been paid to the claimants or their proctors is immaterial. That happens in every case where restitution becomes necessary.

The propositions above advanced with respect to the effect to be given in the limitation proceeding to the decree rendered in the collision case, and with respect to the effect to be given to the entire absence of issues in the limitation proceeding hardly require the citation of authority and we shall merely direct attention to the statutes and some of the decisions which support our conclusions: The limitation proceeding was based on Secs. 4283, 4234 and 4285 of the Revised Statutes and Admiralty Rules 54 and 56. *The Benefactor*, 103 U. S. 239, shows that the liability adjudged in the collision case was *res adjudicata* in the limitation proceeding. *Craig* v. *Continental Ins. Co.*, 141 U. S. 638; *La Bourgogne*, 210 U. S. 95, 122–123, and *Lord* v. *Goodall, etc., S. S. Co.* Fed. Cas. 8506, show that the petitioner could not have been held to be in privity with the disaster.

That to be able to contest the rights asserted by a petitioner in a limitation proceeding claimants must answer the allegations of the petition, appears from *White* v. *Island Transpt. Co.*, 233 U. S. 346, 350; *The Klotawah*, 210 Fed. Rep. 677; *The Pere Marquette*, 203

Fed. Rep. 127, 132; *In re Davidson S. S. Co.*, 133 Fed. Rep. 411. Admiralty Rules 23 and 27 in conjunction with Admiralty Rules 54 and 56 contemplate that the petition shall be answered and that the answer shall be full, explicit and distinct.

From the considerations above discussed it is apparent, we believe, that the decisions cited by the respondents in support of the motion, even if they could be considered as supporting the conclusions which the respondents have sought to draw from their statement of the facts and circumstances with respect to the limitation decree of April 22, 1915, and the effect thereof, have no application whatever to the state of facts set forth in this memorandum and in the affidavit submitted herewith. As these decisions therefore differentiate themselves we shall refrain from discussing them.

It is respectfully submitted that the motion to dismiss or affirm should be denied.

December, 1916.

BURLINGHAM, MONTGOMERY & BEECHER
Proctors for Petitioner

NORMAN B. BEECHER
ROSCOE H. HUPPER
of Counsel

DEC 14 1916
JAMES D. MAHER
CLERK

SUPREME COURT OF THE UNITED STATES

October Term 1916

No. 108

FURNESS, WITHY & COMPANY, LIMITED,
Petitioner,

AGAINST

TANG-TSZE INSURANCE ASSOCIATION, LIMITED, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR PETITIONER

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FIRST POINT

THE PORTING OF THE POMARON WHEN ONE MILE DISTANT FROM THE ALLEGHANY WAS NOT A VIOLATION OF ARTICLE 21 OF THE INTERNATIONAL REGULATIONS. EVEN IF IT COULD POSSIBLY BE CONSIDERED SUCH, IT WAS SO TRIFLING THAT IT SHOULD BE DISREGARDED. THIS IS PARTICULARLY THE CASE IN VIEW OF THE GROSS FAULTS OF THE ALLEGHANY — 10

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1916

No. 106

FURNESS, WITHY & COMPANY, LIMITED
(Respondent-Appellant)
Petitioner

vs.

YANG-TSZE INSURANCE ASSOCIATION, LIMITED, *et al.*
(Libellants-Appellees)
Respondents

BRIEF FOR PETITIONER

STATEMENT

This is a writ of *certiorari* to the United States Circuit Court of Appeals for the Second Circuit, dated June 16, 1915. The opinion of Rogers, *C. J.*, is at page 168 of the Record, and is reported in 215 Fed. Rep. 859. The suit was in admiralty and was before the Circuit Court of Appeals on appeal from the District Court for the Southern District of New York. The trial in the District Court was before Learned Hand, *D. J.* His opinion is at page 147 of the Record, but is not reported.

The suit involves the question of the liability of the petitioner for damages sustained by owners of cargo shipped on the Hamburg-American Line steamship *Alleghany*, resulting from a collision between that vessel and the petitioners' steamship *Pomaron* off the Virginia Capes February 2, 1912. The *Alleghany* with her entire cargo sank and became a total loss.

The owners of cargo on the *Alleghany* and their insurers filed fifteen libels *in personam* against the petitioner in the District Court. The Hamburg-American Line was made a party respondent in some of the libels, but it instituted limitation of liability proceedings, admitted liability, and upon paying into court a small amount of freight money secured a decree relieving it from all further liability. The District Court entered a decree against the petitioner June 13, 1913, for $172,029.81 (Rec., pp. 160-164*). This decree consolidated all the suits (162). An appeal being taken to the Circuit Court of Appeals for the Second Circuit, this decree was affirmed (176).

The facts and circumstances of the collision are principally found in the testimony of Chief Officer Westgarth of the *Pomaron* (82-114); they may be stated shortly as follows:

The *Pomaron*, a steel screw steamship 278 feet long, sailed from Baltimore for Leith February 1, 1912, at 7 A. M., loaded with grain and general cargo. About 12.30 A. M. February 2 she discharged her pilot off Cape Henry and set a compass course East by North (E. by N. 1/4 N. magnetic), and held this course until just before the collision. Her speed was about 9 knots an hour.

The *Alleghany*, a similar steamer, 310 feet long, left New York the night of February 1 bound for the West

* All references are to pages of the Record.

Indies. She was on a course South 2 degrees West true (S. 9-1/2° W. magnetic), and her speed was about 11-1/2 knots an hour. The collision occurred about 110 miles outside of Cape Henry in latitude 37° 26′ north and longitude 73° 42′ west. The angle between the courses of the *Pomaron* and the *Alleghany* was about 111 degrees.

Soon after 10.30 A. M. February 2 chief officer Westgarth, in charge of the watch and on the bridge of the *Pomaron*, with the man at the wheel, made out the *Alleghany* ten or twelve miles away on the port bow, that is, to the northward and eastward, heading about south. The vessels were on crossing courses. In this situation the *Pomaron* was the privileged vessel and the *Alleghany* was bound to keep out of her way. It was broad daylight and the weather was absolutely clear. For three-quarters of an hour the vessels approached each other at full speed and without change of course. As it afterwards transpired, no one on the *Alleghany* saw the *Pomaron* during this entire period. The officer who should have been on the *Alleghany's* bridge was in the chartroom making calculations from his observations. The only man on her bridge was the quartermaster at the wheel, and his view to starboard in the direction of the *Pomaron* was cut off by a wind shield. The *Pomaron's* chief officer was unable to see any sign of life on the *Alleghany*, although he kept close watch upon her all the time that the two vessels were approaching each other.

When the two vessels were about one mile from each other the *Pomaron's* chief officer blew one blast of the whistle in order to attract the *Alleghany's* attention. At the same time he ordered the *Pomaron's* helmsman to port a little. This caused the *Pomaron* to go off her

course about one point to the southward and gave the *Alleghany* a little more clearance. His testimony with respect to this is as follows (85-86):

"I was watching pretty closely while he was coming up, and I saw his bearing was not changing at all; all the time he was closing in on us, but getting pretty well in view all the time until he was about a mile away, and I thought he was getting pretty close and it was time for him to do something.

Q. Did you take a look with your glass? A. Yes.

Q. Did you make out men on the bridge? A. I could see no one on the bridge at all.

Q. Had she a wheel house on the bridge? A. Yes, and she had dodgers up.

Q. A wind shield? A. Yes.

Q. Which side of the bridge was this wind shield? A. Starboard side.

Q. You saw nobody? A. Nobody on the bridge at all.

Q. They were getting pretty close? A. Yes.

Q. As close as a mile? A. Yes, so I thought I would give him a blast on the whistle.

Q. What for? A. To attract his attention.

Q. Wake him up? A. Wake him up a bit, and I also ordered the helmsman to port a little.

Q. Did he obey that order? A. Yes.

Q. How much did he port? A. She went off the course about a point; went off to about east.

Q. Why did you port? A. I had to give him a little more clearance; I expected him to come under my stern all the time, and they were getting too close as I thought to be safe.

Q. Did you think there was any danger then? A. Yes.

Q. What was the danger? A. I saw if he was going to keep on the way he was doing he would catch us somewhere about the engine room.

Q. If you had maintained your course he would have struck you near the engine room? A. Yes, about midships.

Q. Was there any indication he was changing his course at all then? A. No, none at all.

Q. And the effect of porting your helm would be to give him more room? A. Yes; by us porting like that it would get us further away; he would not catch us in the engine room, if he had not altered his course at all.

Q. If you had both maintained the courses you were

on then without change, what do you think would have happened? A. He would have run right into us amidships.

Q. Are you sure of that? A. Yes.

Q. Would not he have got across your bow? A. No, sir, could not have done it.

Q. Could you have possibly got across his bow? A. No.

Q. He was going faster than you were? A. He was going faster than we were.

Q. What was the result of this blast of yours to wake him up? A. About a minute or so after I gave him the blast he answered and gave me two blasts.

Q. You knew what that meant? A. Yes.

Q. What did it mean? A. That he was going to cross ahead of me.

Q. What did you do? A. I rang the engine full speed astern as soon as he gave me two blasts, and reversed the engine."

This blast of the *Pomaron's* whistle brought the *Alleghany's* first officer out of the chartroom. He then saw the *Pomaron* for the first time (142). He blew two blasts, put his helm hard a-starboard and his engine telegraph at full speed ahead twice (*Alleghany's* Log, 146–147). This two blast signal indicated that the *Alleghany* was directing her course to port and attempting to cross the *Pomaron's* bow, which was an improper manœuvre. The chief officer of the *Pomaron* therefore reversed his engines full speed and ordered the helm hard a-port in a last effort to escape collision and to minimize the blow. Collision was then inevitable, however, and the two vessels came together at an angle of about 45 degrees, the *Pomaron's* stem striking the *Alleghany's* starboard quarter about 100 feet from the stern (87–88), cutting into the *Alleghany* in such a way that she sank in a few hours. The *Pomaron* rescued the *Alleghany's* passengers and crew and proceeded to Newport News.

The more important articles of the International Regulations for preventing collisions at sea in force at the time of the collision are as follows:

PRELIMINARY

Risk of collision can, when circumstances permit, be ascertained by carefully watching the compass bearing of an approaching vessel. If the bearing does not appreciably change, such risk should be deemed to exist (26 Stat. L. 326).

TWO STEAM VESSELS CROSSING.

ART. 19. When two steam-vessels are crossing, so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other (26 Stat. L. 327).

COURSE AND SPEED

ART. 21. Where, by any of these rules, one of two vessels is to keep out of the way the other shall keep her course and speed.

NOTE.—When, in consequence of thick weather or other causes, such vessel finds herself so close that collision cannot be avoided by the action of the giving-way vessel alone, she also shall take such action as will best aid to avert collision. (See articles twenty-seven and twenty-nine.) (28 Stat. L. 83).

CROSSING AHEAD

ART. 22. Every vessel which is directed by these rules to keep out of the way of another vessel shall, if the circumstances of the case admit, avoid crossing ahead of the other (26 Stat. L. 327).

STEAM VESSELS SHALL SLACKEN SPEED OR STOP

ART. 23. Every steam-vessel which is directed by these rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed or stop or reverse (26 Stat. L. 327).

GENERAL PRUDENTIAL RULE

ART. 27. In obeying and construing these rules due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger (26 Stat. L. 327).

SOUND SIGNALS FOR VESSELS IN SIGHT OF ONE ANOTHER

ART. 28. The words "short blast" used in this article shall mean a blast of about one second's duration.

When vessels are in sight of one another, a steam vessel under way, in taking any course authorized or required by these rules, shall indicate that course by the following signals on her whistle or siren, namely:

One short blast to mean, "I am directing my course to starboard".

Two short blasts to mean, "I am directing my course to port".

Three short blasts to mean, "My engines are going at full speed astern" (26 Stat. L. 328).

PRECAUTION

ART. 29. Nothing in these rules shall exonerate any vessel or the owner or master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper lookout, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case (26 Stat. L. 328).

PROCEEDINGS IN THE COURTS BELOW

The District Judge, on the supposed authority of this Court's decision in *The Pennsylvania*, 19 Wall. 125, felt compelled to condemn the *Pomaron* for porting her helm at the distance of a mile, which he held to be a violation of Article 21, because he was unable to find that the collision would have occurred if she had not so ported—notwithstanding, as we shall show later, that it was absolutely certain that the porting did not contribute to the collision. The reluctance with which he reached this result is reflected in the following language from his opinion (156):

"I have already said that the result seems to me extremely inequitable and I should be glad if an appellate court could find otherwise, but while the holding-on ship

is charged with the burden of proof, I can see no alternative. The case is one which shows the necessity for the proposed new rule which will not hold each ship *in solido*, but will apportion liability according to fault. Had that been open to me, I should have attributed a very small fraction of blame indeed to the *Pomaron*. As it is, under what I cannot help calling a very mechanical and arbitrary rule of law, I see no escape from assessing this ship with the full loss for a trifling violation of the rule, for it remains true, however we may regret the result, that only unfounded speculation can justify us in saying that the violation could not have produced the collision."

The Circuit Court of Appeals agreed with the District Court that the burden of proof rested upon the *Pomaron* "to show that the fault she committed could not have been one of the causes of the collision" (172), and concluded that as it was impossible to establish with certainty that the collision would have occurred even if she had not ported slightly the *Pomaron* had not sustained the burden which rested upon her.

Questions Presented

For the petitioner we shall argue:

(*a*) That the International Regulations did not apply under the circumstances to the manœuvres of the *Pomaron* when she ported a mile distant from the *Alleghany*, and that the porting was therefore not a statutory fault; and that even if the porting was a fault, it was so trifling that it should be disregarded, particularly in view of the gross fault of the *Alleghany*.

(*b*) That the porting of the *Pomaron* not only did not contribute to the collision but that by no possibility could it have contributed, and that her subsequent manœuvres were justifiable.

(c) That this Court in *The Pennsylvania* merely held that a violation of a statute creates a presumption of contributory fault which can only be rebutted by positive proof that the fault did not contribute to the disaster; and that the lower courts erred, therefore, in placing upon the *Pomaron* the burden of showing that her initial porting could not have contributed to the collision, entirely irrespective of whether it did in fact contribute and notwithstanding that it actually did not contribute.

At every step of the argument it is to be remembered that the *Pomaron* did nothing which hindered or embarrassed the *Alleghany* in the slightest degree, that on the contrary the *Pomaron's* porting was well calculated to avoid disaster, and that, therefore, the *Pomaron* can be condemned only if such a result is made necessary by what the District Judge described as "a very mechanical and arbitrary rule of law".

FIRST POINT

THE PORTING OF THE POMARON WHEN ONE MILE DISTANT FROM THE ALLEGHANY WAS NOT A VIOLATION OF ARTICLE 21 OF THE INTERNATIONAL REGULATIONS. EVEN IF IT COULD POSSIBLY BE CONSIDERED SUCH, IT WAS SO TRIFLING THAT IT SHOULD BE DISREGARDED. THIS IS PARTICULARLY THE CASE IN VIEW OF THE GROSS FAULTS OF THE ALLEGHANY.

Two questions are involved under this point:

(1) Were the circumstances such that Article 21 applied to the *Pomaron's* navigation when she first ported?

(2) If so, was the actual change of course made under the circumstances of such a nature that it should be held a fault?

Before proceeding to discuss these questions it is proper to note the purpose of the International Regulations in general and of Articles 19 and 21 thereof in particular. Those articles provide:

ART. 19. When two steam-vessels are crossing, so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other.

ART. 21. Where, by any of these rules, one of two vessels is to keep out of the way the other shall keep her course and speed.

The whole object of Article 21 is to prevent collision by affording to the burdened vessel under Article 19 a certainty with respect to the action to be taken by the privileged vessel, so that the burdened vessel will not be defeated or baffled in the performance of her duty to keep out of the way. The starboard hand rule (Article 19) is purely

arbitrary. It would be equally effectual to prevent collision if, instead of imposing on the vessel which has the other upon her starboard hand the duty to keep out of the way, that vessel were treated as the privileged vessel and directed to keep her course and speed. The essential hing is that each vessel shall be assured in advance as to the course of the other vessel. To provide such assurance is the purpose of the rules. Without this misunderstandings would be frequent and the number of collisions greatly increased. These propositions are self-evident, and require no citation of authority further than will be observed *infra*.

Article 21 is not to be applied too rigidly, however. Slight fluctuations in speed or variations in course are inevitable. The question in any case is whether the change was of such character and extent as naturally and reasonably to affect or embarrass the navigation of the other vessel. A substantial maintenance of course and speed is all that can be required in any case.

Coming now to discuss the questions stated *supra*, (1) Did Article 21 apply to the *Pomaron's* navigation at the time she ported?

The rules of navigation apply only when to disregard them would create risk of collision, and whether they apply or not is determined by all the circumstances of the particular case. The important circumstances of this case, it must constantly be remembered, are that it was broad daylight and perfectly clear weather; that the vessels were on the open ocean; that the *Pomaron* ported while still a mile away; that the *Alleghany* had not then seen the *Pomaron* and did not know her course; and that if she had observed the *Pomaron* at that moment, she could easily have avoided collision by passing under

the *Pomaron's* stern, as it was her duty to do and as she had time to do then and for some period thereafter.

In *New York & Liverpool U. S. Mail S. S. Co.* v. *Rumball*, 21 How. 372, Mr. Justice Clifford said, at pages 384-385:

"Rules of navigation, such as have been mentioned, are obligatory upon vessels approaching each other, from the time the necessity for precaution begins, and continue to be applicable as the vessels advance, so long as the means and opportunity to avoid the danger remain. They do not apply to a vessel required to keep her course after the approach is so near that the collision is inevitable, and *are equally inapplicable to vessels of every description, while they are yet so distant from each other that measures of precaution have not become necessary to avoid a collision.* Sailing vessels approaching a steamer are required to keep their course on account of the correlative duty which is devolved upon the steamer to keep out of the way, in order that the steamer may know the position of the object to be avoided, and may not be led into error in her endeavor to comply with the requirement. * * * Such precautions as are inculcated in the rule referred to are enjoined, as before remarked, to prevent collision and afford security to life and property; and *in a case where the rule could not be followed without defeating the end for which it was established, or without producing the mischief which it was the design of the rule to avert, of course it would not be applicable, and in such a case a departure from it would be both justifiable and commendable.*" (Italics ours.)

With respect to when "measures of precaution" become necessary the same learned Justice said in *The Nichols*, 7 Wall. 656, at page 664:

"Sailing ships are meeting end on within the the meaning of that provision when they are approaching each other from opposite directions, or on such parallel lines as involve risk of collision on account of their proximity, and when the vessels have advanced so near to each other that the necessity for precaution to prevent such a disaster begins, which cannot be precisely defined, as it must

always depend, to a certain extent, upon the state of the navigation, and the circumstances surrounding the occasion."

A very important English decision as to when the Regulations become applicable is *The Banshee*, decided by Lord Esher, *M. R.*, Lindley, *L. J.*, and Lopes, *L. J.* in the Court of Appeal in 1887, reported 57 L. T. 841, and 6 Asp. M. C. N. S. 221. In that case the *Kildare*, being the privileged vessel, was about 800 yards ahead of and was being overtaken by the *Banshee*, the burdened vessel, in Dublin Bay about 8 P. M. January 27, 1886. Under Article 22 of the Regulations for preventing collisions then in force it was the duty of the *Banshee* to keep out of the way of the *Kildare;* and it was the duty of the *Kildare* to keep her course—just as if the vessels had been on crossing courses like the *Alleghany* and the *Pomaron.* The *Kildare* ported on account of a pilot vessel and thus changed her course. Notwithstanding this porting the *Banshee* by reasonable precautions might have avoided collision. The Court of Appeal held that when the *Kildare* ported 800 yards distant, the regulations had not become applicable, that the *Kildare* was not to blame for porting so far ahead of the *Banshee* that the latter could by reasonable care have avoided a collision; and that the *Banshee* was solely to blame. The decision is so apposite that we quote somewhat at length. Lord Esher, *M. R.*, said, at pages 222-223:

"Now at what period of time is it that the Regulations begin to apply to two ships? It cannot be said that they are applicable however far off the ships may be. Nobody could seriously contend that, if two ships are six miles apart, the Regulations for Preventing Collisions are applicable to them. They only apply at a time when, if either of them does anything contrary to the Regulations, it will cause danger of collision. None of the Regulations

apply unless that period of time has arrived. It follows that anything done before the time arrives at which the Regulations apply is immaterial, because anything done before that time cannot produce risk of collision within the meaning of the Regulations. We therefore have to determine if anything was done by either of these vessels contrary to the Regulations at a time when the Regulations were applicable. After the time when the Regulations become applicable, one of them clearly provides that the leading vessel is to keep her course. Now, a very important question has been raised as to what is the meaning of a vessel keeping her course; but on the present occasion it seems to me to be unnecessary to decide that matter. If what took place with regard to the *Kildare's* porting before this regulation as to keeping her course applied, the porting is immaterial. After the regulation applied she was bound to keep her course within the meaning of the regulation, and if after that time she never did alter her course, she has not been guilty of a breach of the Regulations. And if she has not been guilty of any breach of the Regulations it is obvious that the *Banshee* must be solely to blame, because it was her duty, if the *Kildare* was guilty of no breach of the Regulations, to keep out of her way. Therefore the first question is this: was the first porting of the *Kildare* at such a distance from the *Banshee* that it can be said that that porting was not within the Regulations. * * * There were 800 yards between the two steamers at the time when the *Kildare* ported as she says she did, and we believe she did, on account of the pilot vessel. Whether, therefore, it was right for her to port and go under the stern of the pilot boat, or whether it would not have been better for her to have gone ahead of it, is wholly immaterial. Whatever she did then was before the Regulations began to apply. If so, it cannot be said that she has infringed the Regulations."

Lindley, *L. J.*, said, at pages 223-224:

" My difficulty in connection with the overtaking rule is this, whether the porting of the *Kildare* was justifiable, having regard to the fact that the *Banshee* was behind her and overtaking her. If the *Banshee* was, when the *Kildare* ported, so far astern that with reasonable care she could by altering her course have kept out of her way, then the *Kildare* was not to blame. If, on the other hand,

the *Banshee* was so near that she could not reasonably get out of the way when the *Kildare* altered her course, then the *Kildare* was to blame. I am somewhat struck with the fact that the master of the *Kildare* says he did not bother himself to look round at the *Banshee*. But from the evidence I gather that at that time the *Banshee* was about 800 yards astern, and if that was so we are advised that there was ample time for the *Banshee* to have got out of the way of the *Kildare*. It therefore appears to me that we are justified upon the evidence in saying that the *Kildare* did not infringe the Regulations, while the fact that the *Banshee* was to blame seems to be too obvious to require argument."

And Lopes, *L. J.*, said, at page 224:

"A difficult and important question has been raised in this case as to the meaning of the provision in the Regulations that an overtaken vessel shall keep her course. It is, however, unnecessary in this case to express an opinion on the meaning of those words, because the evidence satisfies me that the *Kildare* did not alter her course after any of the Regulations became applicable, they only becoming applicable when there is danger of collision. In my opinion she ported before there was any danger, and therefore she is not brought within the Regulations. For these reasons I am satisfied that the *Banshee* was solely to blame."

In *The Bellanoch* [1907] P. 170, affirmed by the House of Lords [1907] A. C. 269, the *Canning* and the *Bellanoch* were navigating slowly on crossing courses in the shallow waters of Monte Video Roads December 24, 1905. The *Bellanoch* was dragging through the mud at about one mile per hour. She was the privileged vessel and it was the duty of the *Canning* to port and pass under her stern. The *Bellanoch*, as the *Canning* approached from less than a mile, had been putting her engines full speed astern to clear her propeller, but had given no three-blast signals to indicate this fact to the *Canning* in accordance with Article 28 of the International Regulations. Her engines were going ahead, however, from 4.40 A.M. until

4.45 A.M. when the *Canning* came into collision. In these five minutes the *Canning* had covered only about one-third of a mile. Lord Alverstone, *C. J.*, held that the Regulations did not apply to the reversing of the engines when the *Canning* was more than a third of a mile away. At pages 181-182 he said:

"There was, therefore, in my opinion no obligation upon the *Bellanoch* to sound her whistle, indicating that she was going astern, during the time that the *Canning* was coming down from the breakwater until she got in proximity to the buoys. The action of the *Bellanoch* in going astern, at the periods mentioned in the log, was action taken by her not in consequence of the approach of the *Canning*, but in the ordinary course of her navigation so as to enable her to go ahead upon her eastern course as fast as the condition of the mud would permit her. * * *

"It is true that Art. 28 refers to the signals being given when vessels are in sight of one another, but the words immediately following 'in taking any course authorized or required by the rules', show that it does not mean in sight at any distance, but in sight with reference to the manœuvres which a vessel is authorized or required to take, having regard to the other vessel approaching, for the purpose of avoiding collision. * * *

"I think that any retardation of her speed prior to 4.40 was in the ordinary course of her navigation *and not when she was bound to act with reference to the Canning, whose duty it was to keep out of her way.*" (Italics ours.)

The House of Lords in *The Peter Benoit*, decided November, 1915, 13 Asp. M. C., N. S., 203, indicated that until two steamships on crossing courses were nearer than three-quarters of a mile from each other risk of collision was not involved. Lord Atkinson said, at page 206:

"This is a clear admission that the *Peter Benoit* had the *Aurrera* on her starboard bow from the time he first saw the latter's lights, one-and-a-half miles distant, till she came within three-quarters of a mile of him; that while the *Aurrera* was still keeping her original course, the *Peter Benoit* ported her helm and changed her course

to starboard, and that she persisted in doing that, and going at full speed ahead, notwithstanding that she had received two signals from the *Aurrera*—that she, the *Aurrera*, was going to port under a starboard helm. Their courses thus became crossing courses, necessarily involving, *if continued*, risk of collision. 'Under 19th and 21st of the Regulations for Preventing Collisions at Sea, the *Peter Benoit* was the ship which ought to have given way. She did not do so. She did the very opposite. She still ported, and persisted in going full speed on a port helm, notwithstanding the signals she had received, intending, as her captain said, to cross the bows of the *Aurrera*."

The decision of this Court in *The Victory and The Plymothian*, 168 U. S. 410, also has a bearing as to when the Regulations become applicable in view of the distance at which the effect of what might be called a wrong manœuvre by a privileged vessel can be avoided by a burdened vessel. As to whether the *Plymothian* was at fault in not detecting the first two-blast signal of the *Victory* and in blowing single blast signals, in view of there being sufficient room to correct the proposed erroneous course, Mr. Chief Justice Fuller said, at page 429:

"We have already indicated that the evidence is to our minds satisfactory that the two-blast signal was blown when the *Victory* was below Craney Island Light House. If so, the vessels were a mile and one-eighth apart and the *Victory* was on the *Plymothian's* port bow. The *Plymothian* blew three single-blast signals after that time, and neither of them was dissented from by the *Victory* until the last one, and the proper manœuvres to avoid the risk then created were promptly taken. But, if it were assumed that the first two-blast signal was blown when the *Victory* was half way between Craney Island and buoy No. 7, *the vessels were still half a mile apart, with room to correct the proposed erroneous course.* And if the *Victory* blew her second two blast signal inside of a half minute after the first, as her witnesses testified, and

the *Plymothian* upon hearing one of the two immediately acted on it, the failure to hear the other cannot be considered a fault under the circumstances." (Italics ours.)

That these decisions apply to the circumstances as between the *Alleghany* and the *Pomaron* with respect to when the Regulations became applicable is borne out by the following testimony of Chief Officer Westgarth (107–108, 109):

"Q. What did you think about the possibility of collision when you blew one blast? A. My thoughts at the time were that if he had blown one blast and altered his course to starboard, if he had ported his helm he could have gone under my stern." * * *

"Q. In order to get the matter quite plain on the record will you tell us when it was that in your judgment the circumstances had developed so that collision became unavoidable unless you did something? A. Really not until the *Alleghany* had given me two blasts on the whistle.

Q. Up to that time you had appreciated risk of collision from the time you blew your first whistle? A. Yes.

Q. But you thought it might have been avoided by the other vessel until she gave you two blasts? A. Yes.

Q. Then she was half a mile away from you? A. Yes.

Q. Bearing about three points as I understand you on your port bow? A. Yes.

Q. Then it became under the rule your duty to do something? A. Yes.

Q. It had not been your duty to do anything before that? A. No, sir."

Mr. Kindlund, an expert witness on behalf of the cargo claimants, testified (61, 62, 63):

"Q. If the *Alleghany* had starboarded of course there would have been no collision, would there? A. She did starboard, because the collision followed.

Q. I meant if she had ported? A. No, of course not."

* * * * * *

"Q. Then it was the starboarding of the *Alleghany* that brought about the collision, was it? A. Yes, sir."

These decisions and this testimony fairly establish, we submit, that Article 21 at the time the *Pomaron* ported did not apply to prohibit her doing so, in view of the actual facts and of the circumstances as they appeared to her chief officer. There was nothing in the porting that "defeated or baffled" the *Alleghany* "in the attempt to perform her duty in the emergency". *The Wenona*, 19 Wall. 41, 52. The *Alleghany* was wholly oblivious of any sense of duty. The ships were a mile apart, twice as far as were the colliding vessels in *The Banshee*, and in *The Victory and The Plymothian*, and further than in *The Bellanoch* and in *The Peter Benoit*, *supra*, and the *Alleghany* had ample opportunity to perform her duty and avoid collision by going under the *Pomaron's* stern. She was apprised of this duty by the *Pomaron's* one-blast signal. It was broad daylight, on the open ocean, with no other vessels to embarrass her movements. The *Pomaron* had as much right—and almost as much duty—to port as if the *Alleghany* had been a derelict. The *Alleghany* was as little affected by the porting as if she had been a derelict in fact. That the *Pomaron's* chief officer did not know for a certainty that the *Alleghany* had not observed the *Pomaron* and did not intend to take steps to keep out of the way is not material. As Mr. Justice Brown said in *The Umbria*, 166 U. S. 404, at pages 418–419:

"The case presented is not one where, if both vessels had stopped and reversed, the collision might have been avoided; but whether, under the facts as they subsequently appeared to be, the *Iberia* could be deemed in fault for a manœuvre which would have tended to avoid the collision rather than bring it about, by aiding her in keeping out of the way of the *Umbria*. * * * If the facts afterwards ascertained indicate that such manœuvre, under the circumstances of a particular case,

could not have subserved any useful purpose, the steamer ought not to be held in fault for the non-observance of the rule."

And in *The Victory and The Plymothian, supra,* Mr. Chief Justice Fuller said, at pages 425–426:

"However, the *Plymothian* did not see or hear that signal and cannot be held in fault as contributing to the collision because she failed to see or hear what would not have been followed by any change of course."

The *Pomaron*, of course, had the right to assume that the *Alleghany* would perform her duty and keep out of the way. *The Free State*, 91 U. S. 200; *The Victory and The Plymothian, supra*, at page 426. Such an assumption, however, must yield to the fact, and if the *Pomaron* made such a manœuvre as would not have been incorrect had the fact, as it subsequently appeared—namely, that the *Alleghany* did not intend to keep out of the way—been fully known, then she cannot be held at fault for not manœuvring in accordance with the assumption. In other words, although the situation may have been such as possibly to justify the *Pomaron* in navigating on the basis of a legal assumption, yet she is not to be condemned for not so navigating, for the good and sufficient reason, as it turned out, that the *Alleghany* was not navigating in accordance with the assumption, but on the contrary was not even aware of the *Pomaron's* existence.

It is not seen how the fact that the chief officer of the *Pomaron* did not take mathematically accurate bearings, adverted to by the Circuit Court of Appeals, has anything to do with the case. He knew at all times the position of the *Alleghany* and her bearing with sufficient accuracy for any purpose connected with the navigation of the

Pomaron. The only conceivable purpose for taking more accurate bearings would have been that they were to be used in a lawsuit, and the chief officer is hardly to be condemned for not preparing for such an eventuality. The Regulations do not prescribe that bearings be taken.

The situation which confronted the *Pomaron's* chief officer was not only the most difficult ever presented to a seaman, namely, that of the holding-on vessel when the burdened vessel shows no sign of yielding, but it was rendered doubly difficult by the apparent absence of any navigating officer upon the *Alleghany's* bridge. It would be strange indeed if under such circumstances there should be no basis for criticism whatever action the *Pomaron's* chief officer might take. Where, however, as in this case, the action taken not only did not deceive or embarrass the *Alleghany*, but was in fact best calculated to facilitate proper manœuvres of the *Alleghany* if she should finally endeavor to perform her duty, a court should be slow to find that a rule promulgated to promote safe navigation, even if applicable under the circumstances of this case, was violated.

(2) If Article 21 applied, was the *Pomaron's* porting such a change of course that it should be held a fault under the circumstances?

Let it be supposed that the porting was a fault. As such it was merely technical and tended to avert the disaster, wholly unlike the fault in *The Agra*, L. R. 1 P. C. 501, 505, where the *Elizabeth Jenkins* departed from her course "in a manner calculated to increase, and not to diminish or avoid danger". The *Pomaron's* porting did not create or increase danger of collision, but was well

calculated to lessen danger. Chief Officer Westgarth, on being asked why he ported, said (85):

"I had to give him a little more clearance; I expected him to come under my stern all the time, and they were getting too close as I thought to be safe."

It was away from rather than toward danger. Whether the *Alleghany* did the right thing and ported in order to go under the *Pomaron's* stern, or starboarded as she in fact did and went off to port, the effect of the porting was to give the *Alleghany* more room.

Under such circumstances porting should not be held a fault. In *The Umbria*, 166 U. S. 404, 412, Mr. Justice Brown said, at page 412:

"Upon these considerations, while we think it would have been more prudent in the *Iberia* not to have changed her course, yet in view of the fact that the whistle of the *Umbria* appeared to come from off her port bow, we should be unwilling to say that it was necessarily a fault on her part to port her helm two points, the effect of which would be to give the *Umbria* more room. It is possible that, under the peculiar circumstances, the *Iberia* had a right to assume that the *Umbria* was outward bound from New York, and pursuing a course substantially parallel to her own."

In *The Britannia*, 153 U. S. 130, the *Beaconsfield*, the holding-on vessel, was held in fault by the District Court and by this Court for stopping and backing across the bows of the *Britannia*. She was not held in fault, however, either by the District Court, by the Circuit Court or by this Court for porting. In the Circuit Court, 42 Fed. Rep. 67, 69, Lacombe, *C. J.*, found as a fact that:

"When the *Beaconsfield* [the holding-on vessel] blew her first whistle her wheel was put to port a little; and kept steady a-port; and under her slow engine she drew ahead, her head inclining a little towards the New York docks. * * * Thereupon those upon the *Beaconsfield*,

while still about four lengths from the *Britannic*, blew another single whistle, and, hearing no answer, put their wheel hard-a-port and stopped, and reversed full speed."

The Circuit Court exonerated the *Beaconsfield* for backing and did not hold her in fault for porting. This Court held her in fault for backing, but found no fault with her porting, although it was found that she did port. Mr. Justice Shiras said, at pages 136-137:

"It was next found that the *Beaconsfield*, when she blew her first whistle, put her helm to port a little and went on at a slow speed."

In Mr. Justice Brown's dissenting opinion the facts were carefully recited and the slight porting was not considered a change of course, pages 141–142.

Also in *The Franconia*, 2 P. D. 8, at pages 13-14, Bret, J., said in the Court of Appeal, with respect to porting under circumstances not essentially dissimilar to those in the case at bar:

"In the contrary, it was found in the court below, and it is the opinion of those who advise us here, and it is our opinion, that so far from breaking any rule of navigation at the time, the *Strathcona* did the very best thing she could do—she did yield until a point to the *Franconia*, and afterwards yielded more by putting her helm hard a port; and it is our opinion, and of those who advise us, that that is the best thing she could have done to avoid the effects of the wrong conduct of the *Franconia*. Therefore, the *Franconia* broke the rule; the *Strathcona* broke no rule."

It is difficult to understand how a manœuvre which, if a fault at all, did not prejudice but, on the contrary, actually aided the *Alleghany* to perform her duty and avoid collision, can be regarded other than negligible on the principle of *de minimis*. The *Franconia* has been condemned, however, because she did not keep a vessel which had not been

her and was totally unaware of her course, her wheel was put over "a spoke or two" to port (124), with the result that she changed her course about one point to starboard. The lower courts have seen fit to apply Article 21 with mathematical precision, and to condemn the *Pomaron* for this almost infinitesimal change in her course, disregarding entirely the actual circumstances which made this a prudent manœuvre. That those on board the *Alleghany* were at all times ignorant that the *Pomaron* had actually made any change of course and that, therefore, the navigation of the *Alleghany* was neither affected nor embarrassed are admitted facts. These facts have nevertheless been given no weight by the lower courts in determining the question of the *Pomaron's* liability. If the rules are to be applied with reasonable consideration of the purposes for which they were framed, without hypercritical accuracy and precision, but in consonance with the practical problems presented by the navigation of ships at sea, it is obvious that the *Pomaron* can in no substantial sense be considered a violator of the rule.

On this point the language of Lord Alverstone, *C. J.*, in *The Bellanoch*, *supra*, at page 182, is most convincing:

"I am therefore of opinion that even if there had been a breach of the rule on the part of the *Bellanoch* in not sounding her whistle it would be a purely technical objection, and that it had no possible effect on the collision. The master of the *Canning* admitted that he saw what the *Bellanoch* was doing all the time * * *".

On appeal to the House of Lords, Lord Loreburn, *L. C.*, said [1907] A. C. 269, 270-271:

"But I will assume, though I will not affirm, that the duty of the *Bellanoch* was to sound three short blasts on each and every of the three occasions when, according to the log, she reversed her engines. I think if she had

done so it could not in this case have affected the collision. The master of the *Canning* knew perfectly well what was the course of the *Bellanoch* and what her manœuvre was, and the whistle could not have told him anything he did not know already and could not have affected his action."

The conclusion above stated is the more appropriate because the gross fault of the *Alleghany* is sufficient by itself to account for the collision. In *The City of New York*, 147 U. S. 72, 85, Mr. Justice Brown said:

"Where fault on the part of one vessel is established by uncontradicted testimony, and such fault is, of itself, sufficient to account for the disaster, it is not enough for such vessel to raise a doubt with regard to the management of the other vessel. There is some presumption at least adverse to its claim, and any reasonable doubt with regard to the propriety of the conduct of such other vessel should be resolved in its favor."

This doctrine was reaffirmed in *The Ludvig Holberg*, 157 U. S. 60, 71, and was restated by Mr. Justice Brown in *The Umbria*, 166 U. S. 404, 409, as follows:

"Indeed, so gross was the fault of *The Umbria* in this connection, that we should unhesitatingly apply the rule laid down in *The City of New York*, 147 U. S. 72, 85, and *The Ludvig Holberg*, 157 U. S. 60, 71, that any doubts regarding the management of the other vessel, or the contribution of her faults, if any, to the collision, should be resolved in her favor."

In *The Victory and The Plymothian*, *supra*, at page 423, Mr. Chief Justice Fuller said:

"As between these vessels, the fault of the *Victory* being obvious and inexcusable, the evidence to establish fault on the part of the *Plymothian* must be clear and convincing in order to make a case for apportionment. The burden of proof is upon each vessel to establish fault on the part of the other."

The negligence of the *Alleghany* could not have been more gross. Although hard to believe, it is conceded that the *Alleghany*, a regular liner carrying both passengers and cargo, was permitted to steam blindly on for more than three-quarters of an hour with no one on lookout. Her first officer stated (142):

"I was on watch on the bridge and was engaged in taking observations. I had a free outlook, but, as I must admit, had for some time neglected to look to the starboard side where the other steamer came. * * * I know that it was my duty to keep out of the way. I omitted during a period of three-quarters of an hour to keep a lookout to starboard, and therefore never noticed the *Pomaron* crossing my course until the latter gave a signal to keep clear. * * * There was no lookout man at the time, and the steersman's lookout, to starboard, was blocked by a wind-screen. For a long period of time I neglected to keep a lookout, and therefore first saw the crossing steamer *Pomaron* only at the last moment. My excuse is that I was engaged in making observations."

The rule which these decisions illustrate should be applied in all cases of collision irrespective of whether the lesser fault be statutory or otherwise. Such would seem to be the effect of this Court's decision in *The Oregon*, 158 U. S. 186, 197–198. The rule was so applied by the Circuit Court of Appeals for the Fourth Circuit in *The Lord O'Neill*, 66 Fed. Rep. 77, 78, 80.

If it be suggested that this major and minor fault doctrine should not be applied in determining the liability of the *Pomaron* to the owners of cargo shipped on the *Alleghany* because wholly innocent parties, the answer must be that the owners of such cargo can recover only on showing that the *Pomaron* was guilty of negligence which caused the collision. In determining this question only the conduct of the respective ves-

sels can be considered. If the rule should be relaxed in favor of cargo owners then the vessel guilty of major fault would be benefited in many cases by an apportionment of the damages. If the libellants here are not able to secure their full damages from the owner of the *Alleghany* that is only because of the application of the limited liability statute. The situation is the same as in *The Victory and The Plymothian, supra*, where the major and minor fault doctrine was applied as against the owners of cargo. In that case the *Plymothian* had been held at fault by the lower Court and this Court indicated, at page 424, that the question of her fault was close.

Mr. Chief Justice Fuller there said, at pages 423–424:

"Apparently it is a hardship for the underwriters on the *Plymothian's* cargo to be compelled to bear a portion of their own loss, but if the *Plymothian* was free from fault, this is merely the result of the Limitation of Liability Acts, the value of the *Victory* not being sufficient to pay the entire damages sustained."

So in *The Ludvig Holberg, supra*, various doubts as to the propriety of that steamship's navigation were disposed of in her favor in view of the gross faults of the tug *Leonard Richards*, notwithstanding that the suits were brought by the owner of the barque *Quickstep* and the owner of her cargo, both wholly innocent parties. For failure to secure jurisdiction the tug was not a party to the suits. This Court expressly noticed the difficulty in which the libellants were thus placed, but was not led thereby to impose liability on the steamship by a modification of the major and minor fault doctrine. Mr. Justice Brown said, at page 71:

"We are by no means insensible of the fact that a practical injustice may have been done to the owners of

the *Quickstep* and her cargo in the litigation which is closed by this decision, by reason of the inability of the libellants to obtain service in this suit upon the tug."

If these considerations are sound that is an end of the case, and the decrees of the courts below must be reversed.

SECOND POINT

THIS COURT IN THE PENNSYLVANIA, 19 WALL. 125, MERELY HELD THAT A VIOLATION OF A STATUTE CREATES A PRESUMPTION OF CONTRIBUTORY FAULT WHICH CAN ONLY BE REBUTTED BY POSITIVE PROOF THAT THE FAULT DID NOT CONTRIBUTE TO THE DISASTER. THE LOWER COURTS ERRED, THEREFORE, IN PLACING UPON THE POMARON THE BURDEN OF SHOWING THAT HER INITIAL PORTING COULD NOT HAVE CONTRIBUTED TO THE COLLISION ENTIRELY IRRESPECTIVE OF WHETHER IT DID IN FACT CONTRIBUTE AND NOTWITHSTANDING THAT IT ACTUALLY DID NOT CONTRIBUTE.

The Pennsylvania was a case of collision in fog between the steamer *Pennsylvania* and the bark *Mary Troop*, which violated the statutory rules by ringing a bell while under way instead of blowing a horn. This was a misleading signal. This Court said, 19 Wall. 125, 136-7:

"But when, as in this case, a ship *at the time of a collision* is in actual violation of a statutory rule intended to prevent collisions, it is no more than a reasonable presumption that the fault, if not the sole cause, was at least a contributory cause of the disaster. *In such a case the burden rests upon the ship of showing not merely that her fault might not have been one of the causes, or that it probably was not, but that it could not have been.* Such a rule is necessary to enforce obedience to the mandate of

the statute. In the case of *The Fenham*, the Lords of the Privy Council said, 'It is of the greatest possible importance, having regard to the admiralty regulations, and to the necessity of enforcing obedience to them, to lay down this rule; that if it is proved that any vessel has not shown lights, the burden lies on her to show that her non-compliance with the regulations was not the cause of the collision.' In some cases it is possible to show this with entire certainty. In others it cannot be. *The evidence in the present case leaves it uncertain whether if a foghorn had been blown on the bark, it would not have been heard sooner than the bell was heard, and thus earlier warning have been given to the steamer—seasonable warning to have enabled her to keep out of the way.*" (Italics ours.)

This is the language which led the District Court to hold that it was incumbent on the *Pomaron* to show that the collision would have happened even if she had not ported when a mile distant from the *Alleghany*, and this view was also adopted by the Circuit Court of Appeals.

A. The rule in the Pennsylvania.

The principle which *The Pennsylvania* lays down is primarily one of evidence. The actual violation of a statutory rule at the time of the collision raises a presumption that the fault was a contributory cause of the disaster. This presumption is not conclusive but is rebuttable. It can be rebutted, however, only by positive evidence that the fault did not contribute to the disaster. A mere showing of possibility or probability is not enough, but if the evidence clearly shows that the fault did not, in fact, contribute to the disaster, the contrary presumption is, of course, rebutted.

"In some cases it is possible to shows this with entire certainty. In others it cannot be" (page 136).

B. IT WAS IMPOSSIBLE FOR THE TROOP TO SHOW BY DIRECT EVIDENCE THAT HER FAULT "DID NOT" CONTRIBUTE, AND IN ORDER TO ESTABLISH NON-CONTRIBUTION IT BECAME NECESSARY FOR HER TO SHOW THAT HER FAULT "COULD NOT" HAVE CONTRIBUTED. IN OTHER WORDS, IT WAS NECESSARY TO NEGATIVE THE PRESUMPTION THAT HER FAULT DID CONTRIBUTE BY NEGATIVING THE VARIOUS POSSIBILITIES BY WHICH IT COULD HAVE CONTRIBUTED. IN THIS RESPECT THE POSITION OF THE TROOP WAS ENTIRELY DIFFERENT FROM THAT OF THE POMARON.

In *The Pennsylvania* it was obviously impossible to show that the failure of the *Troop* to blow her fog horn did not contribute to the disaster, because no one could say whether, if her horn had been blown it would not have been heard sooner than the bell was heard and thus earlier warning have been given to the steamer. If it could have been shown, however, that the *Pennsylvania* heard the *Troop's* bell from the very moment when it became her duty to sound her horn, she would have sustained the burden resting upon her of showing that her fault did not contribute to the disaster. Again, if the fact had been that the *Pennsylvania* was proceeding with her helm lashed and all on board below deck and asleep at the time of the collision, the presumption of contributory fault on the part of the *Troop* would have been successfully rebutted.

It was clearly not the intention of this Court in saying, "the burden rests upon the ship of showing not merely that her fault might not have been one of the causes, or that it probably was not, but that it could not have been" (page 136), to lay down a rule that something more was required than positive proof that the fault did not contribute. The words "but that it could not have been" were used in contrast with the character of the evidence offered in that case tending to show the possibility or probability that the fault of the *Troop* did not contribute to the

disaster. There was no positive evidence offered in that case that, in fact, the fault did not contribute to the disaster and there can be no reason to suppose that this Court intended to lay down a rule requiring something more than positive proof that, in fact, the fault did not contribute.

Thus the rule laid down is that a vessel guilty of statutory fault must show by the ordinary rules of proximate cause that her fault did not contribute, and not that it could not have contributed by any possibility irrespective of whether it did or did not contribute.

The only effect of the rule is to shift the burden of proof. Instead of the claimant being bound to prove that the ship's fault *did* contribute to the loss, as would otherwise be the case, the ship is bound to prove that her fault *did not* contribute. As thus understood and applied, the *Pennsylvania* rule serves every purpose which can be attributed either to Congress in enacting the Regulations, or to this Court in interpreting them. There is nothing in the statutes or in this Court's decisions to justify an inference that a ship which has departed from a Regulation should suffer a penalty in addition to assuming the burden of proof.

The language above quoted gives further internal evidence to support this conclusion, in that the Court there based its decision on *The Fenham*, L. R. 3 P. C. 212, from which it appears that the vessel in fault had the burden "to show that her non-compliance with the regulations *was not a cause of the collision.*" (Italics ours.)

It may not be unnatural that the language used by this Court, "in such a case the burden rests upon the ship of showing not merely that her fault might not have been one of the causes, or that it probably was not, but

that it could not have been", should have been misunderstood. But it must be remembered that the Court was speaking of a situation where no certainty was possible as to whether the *Troop's* bell was heard on the *Pennsylvania* as soon as the required foghorn would have been. There was only room for speculation as to the possibility or probability. In this situation it necessarily would have been impossible to show that the failure to have a foghorn instead of a bell did not contribute. The only way to escape the presumption of contributory fault in such a case necessarily was to show that the fault could not have been one of the causes of the collision.

The circumstances of the *Pomaron* and the *Alleghany* differed utterly from those of the *Pennsylvania* and the *Troop*. In the latter case the collision was in thick fog and the *Pennsylvania* could not see the *Troop* until the collision was practically inevitable. A vessel could hardly be seen fifty feet away. She had no seasonable warning to enable her to keep out of the way. The *Troop* was in actual violation of the rules "at the time of collision". Her signal indicated that she was anchored, whereas she was under way. Her fault was an embarrassment up to the very last moment.

Thus considered, it would seem that *The Pennsylvania* is not an authority for the position taken by the District Court and the Circuit Court of Appeals and that the courts below have entirely misunderstood the rule laid down by that case. The District Judge's misconception of the rule resulted in what he himself designated "a very mechanical and arbitrary rule of law" (156).

C. The Supreme Judicial Court of Maine has shown that the rule is "did not" and not "could not".

Our conclusions with respect to the true doctrine of *The Pennsylvania* are supported by the Supreme Judicial Court of Maine in *Prince* v. *Eastern S. S. Co.* 109 Me. 395. hat court discussed interestingly and convincingly what it termed the "did not" and "could not" rules, and after analyzing this Court's decision in *The Pennsylvania* concluded that this Court did not intend to lay down the rule that it was necessary for a vessel which had violated a statutory rule to prove not only that the violation did not contribute, but, in addition, that it could not have contributed to the collision. At page 398 the Court said:

"The court said to the jury it was incumbent upon the plaintiff to show as a positive duty, that his failure did not contribute. That was the absolute end of the burden which could be imposed upon him. It was impossible for him to do more. To establish that a thing absolutely does not exist is the end of negative proof. But the instruction did not stop here. It required that the plaintiff must prove not only an absolute negative, but in some way go further, and, as the instruction says, prove that his failure not only did not, but, as an additional positive duty, could not have contributed to the injury. At this junction arises the perplexity to be solved by the jury."

The lower court in that case had based its charge on the cases of *The Livingstone*, 87 Fed. Rep. 769, and *The Lansdowne*, 105 Fed. Rep. 436, which purport to state the "could not" rule. With respect to these cases the Supreme Court of Maine said:

"It is then manifest that these two cases, which the Presiding Justice used as precedents for the language employed in his charge to the jury, and upon which, without a careful examination, he had a right to rely,

were erroneous interpretations of what might appear, upon a casual reading, to be the language of the rule laid down in the *Pennsylvania*, obviously the parent of these inapt expressions of the law."

That the Maine Court was correct in its criticism of the District Court's decision in *The Livingstone* is shown by the fact that that decision was reversed by the Circuit Court of Appeals for the Second Circuit, 113 Fed. Rep. 879.

What *The Pennsylvania* rule should be stated to be in effect is fairly indicated by the following language from the decision in the *Prince* case, at page 399:

"The misleading feature of the instruction is found in the phrase 'must go a step further'. It required that 'could not' must be proved in addition to 'did not'. We think the instruction should have been, that it was incumbent upon the plaintiff to establish: (1) that his failure to comply with the rules and regulations did not cause nor in any degree contribute to the collision; (2) that he might do this either by direct testimony or by any other facts and circumstances tending to prove that such failure could not have contributed; (3) and that, if he had shown that such failure could not have contributed, he had then produced sufficient evidence to rebut the presumption that it did contribute.

As before remarked, it was contended that the language of the instruction under consideration was in phraseology and effect substantially that employed by the federal courts in defining, what we may term, for the sake of brevity, the 'did not' and 'could not' rules. But we are unable to so construe it. We think a fair interpretation to be given the language employed by the federal courts in the various cases involving a consideration of these rules is in harmony with the foregoing conclusion as to what the instruction in the case at bar should have been."

D. Cases re-affirming the rule of The Pennsylvania considered.

The view above elaborated is borne out also by the fact that in the cases re-affirming the rule of *The Pennsylvania*

the rule has not been so stated as to justify an inference that this Court deemed it to be "could not" instead of "did not". Thus in *Richelieu Navigation Co.* v. *Boston Ins. Co.*, 136 U. S. 408, 422, Chief Justice Fuller said:

"In *The Pennsylvania*, 19 Wall. 125, it was held that where a vessel has committed a positive breach of statute, she must show not only that *probably* her fault did not contribute to the disaster, but that it could not have done so." (Italics ours.)

Also, in *Belden* v. *Chase*, 150 U. S. 674, 699, the Chief Justice said:

"And it is the settled rule in this court that when a vessel has committed a positive breach of statute, she must show not only that *probably* her fault did not contribute to the disaster, but that it could not have done so." (Italics ours.)

In the *Richelieu* case the Canadian steamer *Spartan* was navigating Canadian waters between Canadian ports about 2 A. M. June 19, 1883. She was equipped with a compass known to be defective, and was steaming full speed in thick fog with no lookout forward and was taking no soundings. While thus violating statutes applicable to her navigation she stranded on an island about seventeen miles off her supposed course.

In the *Belden* case the *Yosemite* and *Vanderbilt* were approaching each other head and head on the Hudson River at a combined speed of 25 miles per hour, about 9.30 P. M., July 14, 1882. The *Vanderbilt* saw the *Yosemite's* white light about a mile distant. They later exchanged single whistles which under the rules applicable required each vessel to pass on the port side of the other. Afterwards the *Vanderbilt* blew two whistles and changed her course so as to cross the *Yosemite's* bows, and a collision resulted. The language of the Chief Justice had par-

ticular application to the fault of the *Vanderbilt*, which was gross. The *Yosemite* was not at fault, this Court having held that she had the lights required by the Regulations.

Obviously neither the *Spartan* nor the *Vanderbilt* was in a position to show that her fault did not contribute to these respective disasters, and the statement of the rule in these cases therefore cannot be taken more broadly than its statement in *The Pennsylvania*.

The same observation applies to *The Martello*, 153 U. S. 64. There the barkentine *Freda A. Willey* was not provided with the mechanical foghorn required by the rules. She had sounded her tin foghorn, but only one blast had been heard upon the *Martello*, and this just a minute or two before she appeared in sight out of the fog, a quarter of a mile away. The vessels were thereafter *in extremis*. Mr. Justice Brown said, at pages 75-76, that it seemed not improbable that the absence of the mechanical foghorn contributed to the collision, and that it appeared probable that if the barkentine had been provided with a more powerful horn more than one blast would have been heard and the *Martello* thus apprised of her course and distance. Certainly it was entirely impossible for the barkentine to show with any degree of certainty that the absence of the mechanical foghorn *did not* contribute to the collision. The language of the opinion, like that in *The Pennsylvania*, must be read with this in view.

E. Other decisions of this Court and of the lower courts show that the rule is "did not" and not "could not".

Further than this, other decisions both before and after *The Pennsylvania* show that this Court did not intend to depart from the ordinary rules as to proximate cause and contributory fault in cases involving violation

of a statutory rule of navigation. Thus in *The Farragut*, 10 Wall. 334, the steamer *Farragut* was charged with negligent management whereby a canal boat in tow was forced against the pier of a bridge and with her cargo became a total loss. The steamer did not have a special lookout, as was required, inferentially, at least, by the act of April 29, 1864 (13 Stat. L. 61). It was apparent, however, that the presence of a special lookout would not have prevented the collision. Mr. Justice Bradley said, at page 338:

"But it would be against all reason to contend that the master or owners of a vessel should be made liable for the consequences of an accident by reason of not having a special lookout where the collision or loss could not have been guarded against by a lookout, or where it is clear that the absence of a lookout had nothing to do in causing it. Suppose that a sunken rock, dropped from a cargo of quarried stone, and unknown to the navigators of the channel, were the cause of the accident, could the presence of a lookout have the least tendency to guard against it? A hundred such instances might be suggested where the presence or absence of a lookout would have no influence whatever on the happening of the catastrophe. We are not to shut our eyes and to accept blindly an artificial rule which is to determine, in all cases, whether the navigator is liable to the charge of negligence in causing any loss or damage that may happen. A lookout is only one of the many precautions which a prudent navigator ought to provide; but it is not indispensable where, from the circumstances of the case, a lookout could not possibly be of any service."

In *The Fannie*, 11 Wall. 238, 243, Mr. Justice Strong said:

"We do not think it worth while to discuss the question whether the lookout on the schooner was sufficient. If it was not, it can make no difference, for the want of a proper lookout did not contribute to the disaster. If the schooner held her course, it was all that the steamer had a right to require, and, whether she had a proper lookout or not, it was her duty to do precisely what she did."

And in *The Blue Jacket*, 144 U. S. 371, 390, Mr. Justice Blatchford said:

"The provision of article 24 of the act of March 3, 1885, is that a vessel is not to be exonerated from the consequences of any neglect to keep a proper lookout. It does not say that a vessel shall, because of not keeping a proper lookout, be visited with the consequences of a collision. If the collision does not result as a consequence of neglecting to keep a proper lookout, the vessel is not thereby made responsible for the consequences of the collision, and the exemption of the tug necessarily results from the finding as a fact that the absence of the proper lookout in nowise contributed to the collision."

The rule has been understood as now contended for in various decisions of the lower courts. See *The St. Louis*, 98 Fed. Rep. 750; *The Clara*, 55 Fed. Rep. 1021, 1023; *The Britannia*, 34 Fed. Rep. 546, 557; *The Dentz*, 29 Fed. Rep. 525.

F. THE PENNSYLVANIA WAS INTENDED TO LAY DOWN THE RULE THEN IN FORCE IN ENGLAND, AS ILLUSTRATED BY THE FENHAM, UNDER WHICH IT WAS ONLY NECESSARY TO SHOW THAT AN INFRINGEMENT OF THE REGULATIONS WAS NOT THE CAUSE OF THE COLLISION.

The Pennsylvania was unquestionably intended by this Court to lay down the rule which at that time was established by statute in England. At page 135 this Court paraphrased the provisions of the British Merchant Shipping Act, and added: "Our own statute does not contain this provision expressed, but its meaning is the same". This British Act was 25 & 26 Vict. c. 63, s. 29, and it provided:

"If in any case of collision it appears to the court before which the case is tried that such collision *was occasioned by the non-observance of any regulation* made by or in pursuance of this act, the ship by which said regu-

lation has been infringed shall be held in fault, unless it is shown to the satisfaction of the court that the circumstances of the case made a departure from the regulation necessary." (Italics ours.)

Under this act a vessel guilty of a statutory violation needed only to show that her non-compliance with the regulations was not the cause of the collision. This appears clearly from the language of the *Fenham*, L. R. 3 P. C. 212, cited in this court's opinion in *The Pennsylvania*. In that case the Master of the Rolls said, at pages 215-216:

"There is one fact of great importance clearly established in this case, which is, that the Brig shewed no lights at all, or, at least, if she did shew a light, it was not till the collision was imminent; and therefore, in effect, for any practical purpose, she shewed no lights. * * * But, at the same time, it is of the greatest possible importance, having regard to the Admiralty Regulations, and to the necessity of enforcing obedience to them, to lay down this rule, that if it is proved that any vessel has not shewn lights, *the burden lies on her to shew that the non-compliance with the Regulations was not the cause of the collision.*" (Italics ours)

The Agra, L. R. 1 P. C. 501, referred to by the Courts below, is in no way contrary to *The Fenham*. Both cases were decided by the Privy Council, *The Agra* in 1867, and *The Fenham* in 1870, and the same British statute above quoted was in force at the time of both decisions. In *The Agra* both vessels were held at fault--the *Agra* for not sooner observing and getting out of the way of the *Elizabeth Jenkins*, and the *Elizabeth Jenkins* for departing from her course without sufficient necessity, and for departing from it in a manner calculated to increase and not to diminish or avoid danger (page 505). There is nothing to show that the *Agra* could have avoided the *Elizabeth Jenkins* after her faulty manœuvre, and it distinctly

appears that the manœuvre increased the danger. Certainly it was not shown that she did not contribute to the collision, and the Privy Council seems to have been of the opinion that the *Elizabeth Jenkins* did contribute, as shown by the following language at page 505:

"Looking to all the evidence in the case, their Lordships think—and it is also the opinion of the Nautical gentlemen by whom they are assisted—that the *Agra* would have passed free of the *Elizabeth Jenkins* had the latter maintained her course; and that even if the *Elizabeth Jenkins* had, from apprehension of danger, altered or interrupted her course, she should have done so by lulling up to the wind, thereby stopping her way, and mitigating, as far as possible, the effect of a collision, if a collision should take place."

There is nothing in *The Agra* therefore to justify an assertion that it states the "could not" rule. So far as it is an authority at all, it must be taken as an illustration of the "did not" rule. In *The Pennsylvania* this Court did not refer to *The Agra*, but based its decision on *The Fenham*.

That the British rule at the time *The Pennsylvania* was decided was the "did not" and not the "could not" rule is also shown by the discussion of the various British Acts in *The Khedive*, 5 App. Cas. 876, 891-894, and in *The Fanny M. Carvill*, 13 App. Cas. 455, 458-459. In *Morrison* v. *General Steam Navigation Co.*, 8 Ex. 733, 738, Pollock, *C. B.*, said, with respect to a similar provision in 14 & 15 Vict. c. 79, s. 28:

"And if it could be clearly made out that a vessel having no light had been run down by another, from sheer carelessness and negligence in not keeping a good lookout, we agree with Mr. Watson in thinking that in such a case the plaintiff would have had a right to compensation from the defendants."

G. THE ENGLISH RULE WAS LATER CHANGED BY STATUTE SO THAT MERE INFRINGEMENT OF A REGULATION PUT A VESSEL IN FAULT AND REQUIRED HER TO SHOW THAT THE INFRINGEMENT COULD NOT BY ANY POSSIBILITY HAVE CONTRIBUTED TO THE COLLISION. PROOF THAT THE INFRINGEMENT DID NOT CONTRIBUTE WAS IMMATERIAL.

After the decision in *The Fenham*, on which this Court based its decision in *The Pennsylvania*, the British rule was changed by 36 & 37 Vict. c. 85, s. 17, later becoming section 419 of the British Merchant Shipping Act of 1894. This provided:

"(4) Where in a case of collision it is proved to the Court before whom the case is tried, that any of the Collision Regulations *have been infringed*, the ship by which the regulation has been infringed shall be deemed to be in fault, unless it is shown to the satisfaction of the Court that the circumstances of the case made departure from the regulation necessary." (Italics ours.)

By the statute in force at the time *The Fenham* was decided, quoted *supra*, pages 38-39, the collision must have been "*occasioned by the non-observance*" of the regulation infringed. By the statute last quoted *mere infringement* of the regulations required that the ship be deemed to be in fault.

This statute was so interpreted as to impose upon the offending vessel the burden of showing not merely that her fault did not cause the disaster, but that it could not by any possibility have contributed to it. This is shown by *The Fanny M. Carvill*, *supra*, where the Privy Council said that obviously under Section 419 of the Merchant Shipping Act already quoted mere proof that the infringement of the regulation did not in point of fact contribute to the collision was inadmissible, as the Legislature intended to obviate the necessity for determining

such questions of fact upon conflicting evidence. Literally construed, the statute

"would, in effect make the vessel guilty of the infringement a sort of outlaw of the seas, by depriving her of the right to recover, under any circumstances, more than half the damages to which, by the general law maritime she might become entitled" (13 App. Cas. 455, 459).

It was held, therefore, that if it could be proved that the violation of the regulation could not by any possibility have contributed to the collision, as was shown in that case, then even under the statute the vessel would not be held at fault. This was the law of the British courts from the passage of the statute in 1873 until it was repealed by Sec. 4 of the Maritime Conventions Act of 1911 (1 & 2 Geo. V. c. 57).

The history of the English legislation and cases decided thereunder is concisely stated in Marsden on Collisions, 6th Ed., pp. 39-42. The harshness of the later English statutes, subsequent to *The Pennsylvania*, may be gathered in part from the following quotation from page 42:

"The statute, therefore, imposes on a vessel that has infringed a regulation which is *prima facie* applicable to the case, the burden of showing affirmatively that such infringement could not, by possibility, have contributed to the collision. The court must therefore inquire into the facts, in order to ascertain whether the infringement could possibly have contributed to the collision, for it is not sufficient to find that it did not contribute."

See also *The Duke of Buccleuch* [1891] App. Cas. 310, and *The Corinthian* [1909] P. 260.

The effect of the repeal of this harsh statutory rule is stated by E. S. Roscoe and Helenus M. Robertson in an introductory note to "The Maritime Conventions Act, 1911", London, 1912, page 10, as follows:

"The act repeals the law, hitherto in force, that a ship in the navigation of which one of the Collision Regula-

tions has been infringed, shall be deemed to be in fault for a collision, 'unless it is shown to the satisfaction of the Court that the circumstances of the case made departure from the regulation necessary'. The effect of the removal of this provision will be that a ship will only be held to be in fault for a breach of the Collision Regulations if, in the opinion of the Court, such breach *did in fact* contribute to the collision, even although the circumstances did not make departure from the regulation in question necessary. It follows that any inquiry as to whether a breach of a regulation *might possibly* have contributed to a collision will be henceforth irrelevant, and the law will now be unquestionably clear."

H. THE COURTS BELOW IN EFFECT APPLIED THIS HARSH ENGLISH RULE, NOTWITHSTANDING THAT IT HAD NEVER BEEN ADOPTED IN THIS COUNTRY AND HAD BEEN REPEALED IN ENGLAND.

The District Court and the Circuit Court of Appeals in deciding as they did were guided not by the rule of *The Pennsylvania*, and not by the rule in force in England at the time *The Pennsylvania* was decided, but by a later English rule created by a subsequent act, the policy of which has never been accepted in this country, and which itself has now been abandoned in England. Their misconception of the rule laid down by *The Pennsylvania* cannot but have affected deeply their decision of this case. But, as we shall show in the next point, even under the rule applied by the lower courts, the *Pomaron* should have been exonerated.

THIRD POINT

THE PORTING OF THE POMARON NOT ONLY DID NOT CONTRIBUTE TO THE COLLISION, BUT BY NO POSSIBILITY COULD IT HAVE CONTRIBUTED. HER SUBSEQUENT MANŒUVRES WERE JUSTIFIABLE.

A. THE POMARON'S PORTING DID NOT AFFECT THE NAVIGATION OF THE ALLEGHANY.

When for the first time those on board the *Alleghany* became aware of the presence of the *Pomaron* the *Pomaron* was on a course slightly to starboard of that upon which she had been proceeding previously. The first officer of the *Alleghany* did not know that the *Pomaron* had in fact ported nor was he aware of any change in her course. Even if he had such knowledge certainly his action was in no way affected by it. His own statement is:

"I omitted during a period of about three-quarters of an hour to keep a lookout to starboard, and therefore never noticed the *Pomaron* crossing my course until the latter gave a signal to keep clear and had already approached so near that a collision was unavoidable. There was no lookout man at the time and the steersman's lookout, to starboard, was blocked by a wind screen. For a long period of time I neglected to keep a lookout, and therefore first saw the crossing steamer *Pomaron* only at the last moment" (142).

The statement in the log is:

"The first officer was engaged in taking observations of the sun and had just gone into the chart-house to note the measured latitude when he heard two short blasts of steam whistle. He ran out immediately and saw a steamer about five points from forward close by the starboard side crossing our course. Realizing that he could not clear her by porting, he gave two short whistles and

also put the helm hard-a-starboard. The engine telegraph was put twice full speed ahead, but the collision was unavoidable, as the steamer was too close to the *Alleghany*" (146–147).

From this it is apparent that the *Pomaron's* porting not only did not contribute, but could not by any possibility have contributed to the collision, except upon the theory that but for her porting she would not have been at the point where she was when the collision occurred. The Circuit Court of Appeals did not reach any different conclusion upon this question. The courts below apparently regarded as unnecessary any finding that the *Pomaron's* porting either did contribute or could have contributed to the collision under the ordinary rules of proximate cause.

B. THE LOWER COURTS HAVE ERRONEOUSLY APPLIED THE "BUT FOR" RULE.

Regarding this point as immaterial, the courts below considered only whether it had been shown that the collision would have occurred even had the *Pomaron* maintained her original course. The test thus applied was a purely mathematical one. This clearly appears from the District Judge's opinion (153–155). The only question which they considered important was whether the *Pomaron*, had she remained upon her original course, would have arrived at the point of intersection with the course of the *Alleghany* at the same instant with the *Alleghany*. Thus the lower courts adopted a test which this court distinctly disapproved in *The Umbria*, 166 U. S. 404, 420–421, where it was said:

"It is true that if she had stopped promptly, she might not have reached the point where the courses of the two steamers intersected; but it is equally true that if she had been going at a much greater speed than she was she

would have passed the point of intersection before the *Umbria* reached it. Manifestly this is not the proper test. The propriety of certain manœuvres cannot be determined by the chance that the two vessels may, or may not, reach the point of intersection *at the same time*, but by the question whether their speed can be stopped before their arrival at the point where their courses intersect."

Obviously such a test could be properly applied only if the ordinary rules of proximate cause were disregarded, and the so-called "but for" rule adopted. That the "but for" rule does not prevail in the Federal courts is indicated clearly in *Railroad Company* v. *Reeves*, 10 Wall, 176; *The Umbria, supra; The St. Louis*, 98 Fed. Rep. 750, and many other cases.

In applying the "but for" rule to the determination of the *Pomaron's* responsibility for the collision the Circuit Court of Appeals has apparently departed from principles which it has itself laid down in other cases.

In *Long Island R. R. Co.* v. *Killien*, 67 Fed. Rep. 365, 367, the Circuit Court of Appeals for the Second Circuit said:

"Only such vessels can invoke the violation of the statute as an actionable fault as have been prejudiced by it, either because their own movements have been embarrassed by the presence of the offending vessel, or because they have omitted to take some precaution in ignorance of her presence, which they might otherwise have avoided danger by adopting."

In *The Pocahontas*, 217 Fed. Rep. 135, the steamship *Maia* was charged with having been improperly anchored in the North River near the New Jersey shore, in such a way as to encroach on the fairway. Barges being towed by the steamtug *Pocahontas* came into collision with the

Maia. Section 15 of the act of March 3, 1899, 30 Stat. L. 1152, C. 425, provided:

"That it shall not be lawful to tie up or anchor vessels or other craft in navigable channels in such a manner as to prevent or obstruct the passage of other vessels."

The District Court for the Southern District of New York held that the *Maia's* conduct in so anchoring could not be entirely condoned. An appeal being taken, the Circuit Court of Appeals for the Second Circuit held that the *Maia* was not liable, and Coxe, *C. J.*, said, 235 Fed. Rep. 116, 117:

"We think there can be no doubt regarding the negligence of the *Pocahontas*, but it seems to us that the Judge was in error in holding the *Maia*. It is argued that she was anchored outside the anchorage ground and across the fairway, that she had no lookout and that she gave no warning signal indicating that she was off the anchorage ground. If the *locus in quo* had been a narrow, tortuous stream, there might be some reason for such contentions but we are dealing here with a river nearly a mile wide and navigable the entire distance from shore to shore. The anchorage regulations are not in evidence. We do not think the *Maia* was anchored off the anchorage ground but if she were partly off or wholly off, that did not justify other vessels in running into her. There was nothing to prevent the Cornell tugs from taking down their tow with perfect safety had they been properly handled; they had a quarter of a mile unobstructed water on the Jersey side and over half a mile on the New York side. The suggestion that there was danger of colliding with ascending tows on the New York side is not at all persuasive. If the helping tug had been sent back to aid the flotilla in passing the *Maia*, there would have been no collision.

"It seems to us that the tugs were clearly responsible for the collision and that the judgment against the *Maia* is based upon technical considerations too refined to be considered. The tugs had practically the entire river in which to pass the *Maia* and if they had been properly handled they would have passed without danger. They should be held solely responsible."

That a vessel's fault cannot be considered contributory to a collision merely because the result of her fault was to place her at the point of collision was held by the House of Lords in *Cayzer, Irvine & Co.* v. *Carron Co.*, 9 App. Cas. 873. There the *Clan Sinclair* violated rule 23 of the Thames rules which required that she should ease her engines and wait until the *Margaret* should pass clear. If the *Clan Sinclair* had obeyed the rule she would not have been at the point of collision when she was. Lord Blackburn said, at page 883:

"Then it is said that the collision was owing to the *Clan Sinclair* being where it was. Undoubtedly in one sense that is so. If the *Clan Sinclair* had been some hundred yards higher up the river, the fact which made it a matter of rashness for the *Margaret* to run where it did run would not have existed. But that is not a sufficient ground for saying that the fact of the *Clan Sinclair* being there was the cause of the accident. The *Clan Sinclair* would not have been there at the time when it was there if it had not been that that vessel did not ease and wait so soon perhaps as it ought to have done; but that was not the cause of the accident, but that the *Margaret*, knowing where the *Clan Sinclair* was, attempted to pass between it and the *Zephyr* where there was not sufficient room."

And at pages 886-887 Lord Watson said:

"I think that a vessel which is proved to have disregarded these precautions must accept the onus of shewing that the neglect of them did not contribute to any collision or damage which may have occurred at the time or subsequently. But then I am of opinion that in the present case the *Clan Sinclair* has discharged herself of that onus. I think it is made out by the evidence that nothing was either done or left undone by those who were navigating her which can reasonably be regarded as one of the causes of the collision. The result was to bring the vessel a good deal further down the Thames than she ought to have been; and if that conduct on the part of the *Clan Sinclair* had been such as to place the *Margaret* at this disadvantage, to throw her into difficulties and make it doubtful

what course she ought to pursue, then I could hardly have excused the *Clan Sinclair* from contribution to the collision in the present case. But the fact was not so. The new and wrong position into which I assume the *Clan Sinclair* had been brought by her neglect of the rule, was perfectly apparent to those on board the *Margaret*, apparent for a considerable time and a considerable distance – for a time and distance of such appreciable extent that they could with ordinary care have avoided the collision which ensued."

So in *The Bellanoch*, *supra*, the fact that if the *Bellanoch* had not put her engines at full speed astern without blowing three blasts the vessels might not have met at the point of collision was of no importance.

The same doctrine was also laid down by this Court in *The Ludvig Holberg*, *supra*, where it was said, at page 67:

"If she ran twenty miles an hour down to the Narrows, and was running dead slow at the time she first heard the tug's whistle, fault could not be imputed to her for her previous speed."

C. THE POMARON'S MANŒUVRE WAS HELPFUL TO ANY PROPER MANŒUVRE BY THE ALLEGHANY.

It is manifest that when the *Pomaron* ported and gave one blast a mile distant the *Alleghany* could easily have avoided collision either by slowing or stopping or reversing or by altering her course and passing astern of the *Pomaron*. This it was her duty to do and the *Pomaron* was justified in believing that she would do it. The alteration of the *Pomaron's* course one point gave the *Alleghany* more clearance. It was a better manœuvre than stopping or reversing, which would have thrown the *Pomaron* directly in front of the *Alleghany*, in case at the last moment she should port her helm, as it was her duty to do. It was better than starboarding, for that would have turned the

Pomaron directly towards the *Alleghany* and would have thwarted the latter in every proper effort, for if she should port the two vessels would come together, and if she should stop and reverse she would be directly across the *Pomaron's* bows. It enabled the *Alleghany* the more readily to avoid the *Pomaron* if inclined to do so. The chief officer of the *Pomaron* said that collision could have been avoided by the *Alleghany's* efforts up to the time the *Alleghany* starboarded when the vessels were half a mile apart (102, 109).

Instead of performing her duty, however, the *Alleghany* proceeded full speed on her course until the vessels had come within half a mile of each other, and then, instead of porting her helm so as to go under the *Pomaron's* stern, blew two blasts, starboarded her helm and kept on across the *Pomaron's* bows. Everything the *Alleghany* did from first to last was wrong. She had no officer on the bridge; she had no lookout; she was not aware of the *Pomaron's* presence and made no attempt to perform her duty to keep out of the *Pomaron's* way. When she did discover the *Pomaron* her disregard of rules continued. In starboarding she violated Article 19 of the Regulations, the starboard hand rule, and Article 22, which required that she should not cross ahead of the *Pomaron*. In continuing at full speed she violated Article 23. As to her starboarding, the District Judge said that the *Pomaron's* chief officer "was suddenly confronted with the very worst manœuvre which his adversary could execute" (155).

The situation as to contributory fault on the part of the *Pomaron* is, therefore, the same as that of the *Traverse* in the case of *The Livingstone*, 113 Fed. Rep. 879, decided by the Circuit Court of Appeals for the

Second Circuit. In that case the violation relied on was the absence of a red light on the *Traverse*. Lacombe, *C. J.*, said, at pages 882–883:

"He [the mate of the *Livingstone*] could see the *Traverse*, while her signal notified him as plainly as any lights would have done that she was directing her course to starboard. Indeed, when pressed upon cross-examination, this witness admitted that the one whistle heard by him gave him all the information needed, and that the absence of the red light made no difference. * * *

But it must be accepted that the position when the last signal sounded was one of safety, and that peril and disaster came thereafter only as the result of an amazing piece of stupidity in the navigation of the *Livingstone*. For this reason we cannot hold that failure by the *Traverse* to display a red light was a fault contributing to the disaster."

Mr. Kindlund, testifying for the cargo claimants, agreed on cross-examination that "it was the starboarding of the *Alleghany* that brought about the collision" (63).

D. Even under the later more stringent English statutory rule the Pomaron would not have been condemned.

In *The Fanny M. Carvill*, 13 App. Cas. 454, the American barque *Fanny M. Carvill* collided with the Swedish barque *Peru* off Beachy Head about 9:30 P. M., November 18, 1874. The *Peru* was the privileged vessel, and it was the duty of the *Fanny M. Carvill* to keep out of her way. The sailing rules applicable provided that the red and green side lights should be fitted with inboard screens projecting at least three feet forward from the lights, so as to prevent the lights from being seen across the bow (page 458). The screen of the *Peru* was about eleven inches short of the prescribed length. The Privy Council found that there was an infringement of the Regulation and said that it had not been shown that the circumstances of

the case made a departure from the Regulation necessary. On behalf of the *Fanny M. Carvill* it was contended that by reason of the defect in the *Peru's* screen her green light was visible to and seen by those on board the *Fanny M. Carvill* and gave rise to the inference that the *Peru* was bearing away, although it was her duty to keep her course. It was found that the *Peru* did in fact keep her course. There was some evidence that the *Peru's* green light might be seen across her bow.

The High Court of Admiralty "found as a fact that the green light of the *Peru* was not seen across the bow of the *Peru* by those on board the *Fanny M. Carvill*, and, therefore, could not have contributed to the collision" (page 457). The Privy Council concluded, at pages 457-458:

"That the green light of the *Peru* not only was not, but could not by possibility have been seen by those on board the other vessel; and, accordingly, that the defect in her screens neither did, nor could have contributed to the collision. This conclusion was probably intended to be implied, though it is not in terms expressed, in the finding of the Court of Admiralty. These being the facts of the case, it follows that the *Fanny M. Carvill*, which failed to keep out of the way of the *Peru*, must be pronounced solely to blame for the collision; unless by force of the 17th section of the Merchant Shipping Act, 1873 (36 & 37 Vict., c. 85), as construed in the recent case of *The Hibernia* (2 Asp. Mar. Cas. 454) the *Peru* is to be deemed to be also in fault; although the particular infringement of the sailing rules imputed to her neither did, nor could by possibility have contributed to the accident."

In the course of its discussion with respect to the effect of 36 & 37 Vict., c. 85, s. 17, the Privy Council said, at page 459:

"Their Lordships therefore conceive that, whatever be the true construction of the enactment in question

that which would take the case out of its operation by mere proof that the infringement of the regulation did not, in point of fact, contribute to the collision, is inadmissible. They conceive that the legislature intended at least to obviate the necessity for the determination of this question of fact (often a very nice one) upon conflicting evidence.

There remain, however, two other possible constructions. The first is that, on proof of an infringement of any of the regulations for preventing collisions, there arises, subject only to the qualification contained in the final clause of the section, an absolute presumption of culpability against the vessel guilty of such infringement, to which the Court is bound to give effect, whatever the nature of the infringement may be. The other is that the infringement must be one having some possible connection with the collision; or, in other words, that the presumption of culpability may be met by proof that the infringement could not by any possibility have contributed to the collision."

The second construction mentioned was adopted.

That because the *Alleghany* was not aware of the *Pomaron's* porting and could not by any possibility have been influenced by it, and that the porting could not by any possibility have contributed to the collision, is also established by *The Bellanoch* [1907] P. 170, affirmed by the House of Lords [1907] A. C. 269. This case was decided on facts which, as appears from the statement, *supra* (pp. 15–16), were the converse of those in *The Fanny M. Carvill*, *supra*. The master of the *Canning* saw and knew exactly what the *Bellanoch* was doing, namely, putting her engines full speed astern without blowing three blast signals. Lord Loreburn said, at pages 270–271:

" But I will assume, though I will not affirm, that the duty of the *Bellanoch* was to sound three short blasts on each and every of the three occasions when, according to the log, she reversed her engines. *I think if she had done so it could not in this case have affected the collision. The master of the Canning knew perfectly well what was the course of the Bellanoch and what her manœuvre was,*

and the whistle could not have told him anything he did not know already and could not have affected his action." (Italics ours.)

In the Court of Appeal Lord Alverstone, *L. J.*, said, at page 182:

"I am therefore of opinion that even if there had been a breach of the rule on the part of the *Bellanoch* in not sounding her whistle it would be a purely technical objection, and that it had no possible effect on the collision. The master of the *Canning* admitted that he saw what the *Bellanoch* was doing all the time * * *."

These two cases together bring out clearly the principle that a statutory violation cannot be held to have contributed by any possibility to the disaster in either of two events:

(*a*) The violation is unknown to the other vessel;

(*b*) The violation, even if known, does not in any way interfere with the other vessel's ability to take the necessary steps to avoid collision.

Applying this principle to the case of the *Pomaron* it is apparent that her porting if a fault could not by any possibility have contributed to the disaster, irrespective of whether the *Alleghany* was or was not aware of any change of course.

The force of this conclusion so far as it is supported by *The Bellanoch* is emphasized by the dissenting opinion of Fletcher-Moulton, *L. J.*, where he said, at page 191:

"The statutory blame makes the offending vessel in fault, unless the omission is of such a nature that it could not have possibly affected the course of events in any way, *and I doubt if we can say this in any case where the omission is not of a matter which would never have come to the knowledge of the other ship.*" (Italics ours.)

Inferentially, if in that case it could have been said that the reversing of the engines of the *Bellanoch* without blowing three blasts had not come to the knowledge of the *Canning*, Fletcher-Moulton, *L. J.*, would have agreed that it could not possibly have affected the collision.

Since the *Pomaron's* porting did not come to the knowledge of the *Alleghany*, and could not in any possible way have affected her navigation, it could not have contributed to the collision by any possibility. It follows inevitably that the *Pomaron* must be wholly exonerated, even under the lower court's interpretation of the rule in *The Pennsylvania.*

These decisions also show that the fault complained of must be one that has some possible connection with the accident, even where the extreme English statutory rule is applied. In *The Fanny M. Carvill, supra*, at pages 458–459, it is said:

"Again, it can hardly be denied, though the words perhaps admit of such contention, that the infringement proved must be one existing *at the time of the collision.* And if this be so, it seems but reasonable to infer that it must also be one *that has some possible connection with the accident.*" (Italics ours.)

E. The Pomaron's subsequent manœuvres were justifiable.

It remains to inquire whether the *Pomaron* neglected reasonable precautions to avoid the consequences of the *Alleghany's* wrongful manœuvres. No such manœuvres were, of course, to be anticipated. The *Pomaron* had the right to assume that the *Alleghany*, after being made aware of her presence would navigate properly. When the *Alleghany* starboarded and sought to cross the *Pomaron's* bow, the vessels were even then almost upon each other. In those difficult circumstances it seemed

best to the *Pomaron's* chief officer to hard a-port and reverse, and this he did. Westgarth testified (87):

"After I had rung full speed astern I saw the *Alleghany* - she was getting probably half a mile or a little less—she put her helm hard a-starboard and I could see she was swinging around, her stern was flying into us and of course when he put his helm hard-a-starboard, his stern swung around and caught us on the bow, about abreast of No. 3 hatch."

And further (102–103):

"Q. When the other vessel gave you two blasts on the whistle what did that indicate to you? A. That he was going to put his helm to starboard and try to cross ahead of me.

Q. He was half a mile off then? A. Yes.

Q. Or approximately so. A. Yes.

Q. Wasn't there plenty of time for you to starboard at that time and go under his stern? A. No.

Q. You could swing two points in half a mile? A. Not the way he was swinging around at the same time.

Q. His boat was not a very long boat, was it? A. No, sir, about 300 feet.

Q. Her stern would not have swung a great deal; she only changed her heading altogether about three points according to your estimate; if you were half a mile off, and had distinct notice that the other vessel was starboarding her helm; wasn't it within your power to avoid collision by starboarding your helm instead of porting it? A. I don't think so.

Q. Don't you think so now? A. No.

Q. If you had not begun to port before that you would not have continued when you got the two blast signals? A. I should never have starboarded.

Q. At the distance of half a mile? A. No, not after he answered my one blast signal like that and gave me two.

Q. Giving two notified he was going away from you? A. He couldn't in time though."

* * * * *

Q. Starboarding two points would have cleared her, wouldn't it? A. I hardly think it would; it might have.

Q. She was going ahead all the time? A. Yes; we were going ahead at that time as well.

Q. That would give you better steerage way? A. But it would bring us pretty close together before we got around."

His action was clearly *in extremis*. If he made a mistake his action cannot be charged as fault, and so the District Judge found (155). The *Pomaron's* action in reversing and hard a-porting having unquestionably been produced by the fault and mismanagement of the *Alleghany*, this decision accords with all the authorities. *The Elizabeth Jones*, 112 U. S. 514, 526; *The Maggie J. Smith*, 123 U. S. 349, 355-6; *The Blue Jacket*, 144 U. S. 371, 391-2. Whatever any fault of the *Pomaron* in porting might otherwise have amounted to, it is certain that it bore no legal relation to the *Pomaron's* efforts to avoid the *Alleghany's* wrongful manœuvres. In *The Ludvig Holbery*, *supra*, it was said at page 67 with respect to collision in fog:

"If she ran twenty miles an hour down to the Narrows, and was running dead slow at the time she first heard the tug's whistle, fault could not be imputed to her for her previous speed."

The case at bar is in many respects not unlike *The Huntsman*, 11 Asp. M. C. N. S. 606. There the *Huntsman*, the burdened vessel, failed to keep out of the way because the officer in charge of her bridge was diverted by signalling. The *Rameses*, the privileged vessel, kept her course and speed until it appeared that the *Huntsman* was taking no measures to keep out of the way. She then slowed her engines and sounded a long whistle to attract the attention of the *Huntsman*, and soon afterwards put her engines full speed astern and sounded three short blasts. The *Huntsman* continued on at high speed, apparently attempting to cross ahead of the *Rameses* and,

swinging under a starboard helm, struck the stem of the *Rameses*. Various charges of fault were made against the *Rameses*; with respect to which Bargrave Deane, *J.*, said, at pages 607-608:

"Now, it is said: 'Your fault was that you did stop when you ought not to have done so, and you never reversed and yet gave a misleading three-blast signal.'

"Upon this question as to altering her speed by a vessel whose duty it is to keep it under Article 21, it is almost impossible to lay down any fixed rule. Good seamanship requires that in any case a time may come when the course or speed or both of a stand-on ship may and ought to be altered. The difficulty in such a case is to decide at what exact time such alteration not only may be but ought to be made. It is impossible, mathematically speaking, to fix that time—various ingredients come into the matter. * * * The burden of taking action and departing from the rule is cast upon that officer, who has to determine when that point of departure ought to occur. *It must not be pressed too severely in any case. If the officer is carefully watching the movements of the other vessel and endeavoring to do his best to judge when the time shall arrive for him to act, it ought not to be made a complaint against him that he waited too long or he acted too soon.* * * * There was a manifest error of judgment as to the place in the intersecting courses where the vessels would relatively pass each other, with the result that instead of porting and passing under the stern of the *Rameses* the *Huntsman* kept her course and so did not keep clear of the *Rameses*. * * * In my opinion, if he (the officer in charge of the *Rameses*) had not slowed his engines in all probability he would have been cut in two by this big ship instead of hitting her amidships on the starboard side. I think the conduct of the officer of the *Rameses* was not blameworthy, but that he did the best he could in extremely difficult circumstances, and that the collision was far less serious than it would have been if he had kept his speed without slowing. * * * I think the *Huntsman* is alone to blame." (Italics ours.)

In *The Tempus* [1913] P. 166, the *Breiz Huel* and the *Tempus* were approaching on crossing courses, and the *Breiz Huel* sought at the last moment to cross ahead of

the *Tempus*, the privileged vessel. Sir Samuel Evans said, at page 171:

"It has been pointed out over and over again that the Court ought to be careful not to cast blame too readily upon a vessel which is placed in difficulty by another vessel. In the first place, the *Breiz Huel* gave no indication at all to the *Tempus* of what she was going to do, up to the very last. Therefore, the *Tempus* was left in doubt as to whether at the very last something would be done by the *Breiz Huel* to avoid collision. I have said that if the *Breiz Huel* had reversed her engines, about a minute or less before the collision, the collision would have been avoided, *and I do not think I ought to cast blame upon the Tempus if she expected, as no doubt she did, that up to that stage something would be done by the other vessel to carry out the obligations placed upon her.* The *Tempus*, in fact, almost immediately afterwards, did take action. She ported her helm to try to avoid the collision. She then, almost as one order, put her engines full speed astern and hard a-ported. If she had reversed a little earlier than she did, I think it is very doubtful whether the collision would have been avoided." (Italics ours.)

In *The Bywell Castle*, 4 P. D. 219, 226-227, Brett, *L. J.*, said:

"The next question is whether the *Bywell Castle* being put into that difficulty did what was wrong. It is said that she did so in two instances. But what is the wrong that the Court is bound to find she did? Not merely that she did a wrong thing, but that she was guilty of a want of that care or skill which she ought to have shewn under such difficult circumstances. I am clearly of opinion that when one ship, by her wrongful act, suddenly puts another ship into a position of difficulty of this kind, we cannot expect the same amount of skill as we should under other circumstances. The captains of ships are bound to shew such skill as persons of their position with ordinary nerve ought to shew under the circumstances. But any Court ought to make the very greatest allowance for a captain or pilot suddenly put into such difficult circumstances; and the Court ought not, in fairness and justice to him, to require perfect nerve and presence of mind, enabling him to do the best thing possible. * * * We are, however, advised that

the order to put the helm hard a-port had no practical effect as to the collision. If that be so, of course it follows that the last wrongful act of the *Princess Alice* was done so near to the other that it was impossible by any manœuvre to avoid the collision. If the fact of ordering the helm hard a-port had no effect upon the collision, it is immaterial whether it was given or not. Even if it had an effect and was wrong, we have come to the conclusion that the captain of the *Bywell Castle* was suddenly put into an extremely difficult position, and assuming that a wrong order was given, that it ought not under the circumstances to be attributed to him as a thing done with such want of nerve and skill as entitles us to say that by negligence and want of skill the *Bywell Castle* contributed to the accident."

In *The Bruxellesville*, reported in the Sh ng Gazette for November 23, 1907, the *Veritas*, the l on vessel, changed her course. Bucknill, *J.*, said·

"I and those who are assisting m conclusion that his judgment [the maste s] was a correct one, and that, if he had not something, in all probability he would have hit the er vessel. * * * This Article 21 is the most difficult of all the Regulations to understand and to obey. If a man of ordinary intelligence, being a competent person—because, of course, he must be both a man of ordinary intelligence and competent to navigate the ship—does that which he believes to be the right thing, and which turns out to be the right thing in this sense, that if he had not done something the collision would have taken place almost certainly by the wrongdoing of the other ship—and although in the words of Lord Justice Vaughan Williams, Rules are not intended to annihilate intelligence or obviate the use of intelligence if the exercise of intelligence will avoid the collision –if he is a competent man, you must not say that in the circumstances something better might have been done, perhaps, provided you were satisfied he did not act until he was satisfied that the collision could not then be avoided by the action of the wrongdoing ship alone. I cannot suggest anything that this man might have done, and the result at which I arrive is that the *Bruxellesville* is alone to blame."

In the Circuit Court of Appeals the libellants sought to show that the *Alleghany* did not starboard, and thereby inferentially to show that the *Pomaron's* final manœuvres were not *in extremis*. This attempt was based on a statement of the *Alleghany's* chief officer that no commands were given to her steersman (143). The effect of this statement is wholly overcome, however, by the entry in the *Alleghany's* log which proves that she did starboard (146–147). Moreover it is conceded that she blew two blasts, and this meant that she was starboarding. No one testified that the *Alleghany* did not starboard, and the entry in her log is confirmed by the positive testimony of the *Pomaron's* chief officer and other witnesses.

Chief Officer Westgarth said (87):

"After I had rung full speed astern I saw the *Alleghany*—she was getting probably half a mile or a little less—she put her helm hard a-starboard and I could see she was swinging around, her stern was flying into us and of course when he put his helm hard a-starboard his stern swung around and caught us on the bow, about abreast of No. 3 hatch."

John Hyslop, the apprentice who was at the *Pomaron's* wheel, testified (125):

"Q. Do you know what the *Alleghany* did? A. She starboarded her helm.

Q. How do you know? A. Because you see them swinging to port; that was after she blew the two blasts; she didn't alter her course at all before that."

George Hogg, the *Pomaron's* boatswain, testified (130):

"Q. Do you know what the other boat did; do you know whether she changed her course? A. She altered her course; yes, sir.

Q. Under what helm? A. Starboard helm.

Q. How do you know? A. Her quarter swung across our bow.

Q. And the two vessels came together how? A. The *Alleghany's* starboard side came across our bow.

Q. Did she stop her way at all? A. No."

LAST POINT

THE DECREE OF THE CIRCUIT COURT OF APPEALS SHOULD BE REVERSED, WITH COSTS, AND THE CAUSE REMANDED TO THE DISTRICT COURT WITH DIRECTIONS TO ENTER A DECREE DISMISSING EACH OF THE LIBELS, WITH COSTS.

December, 1916.

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